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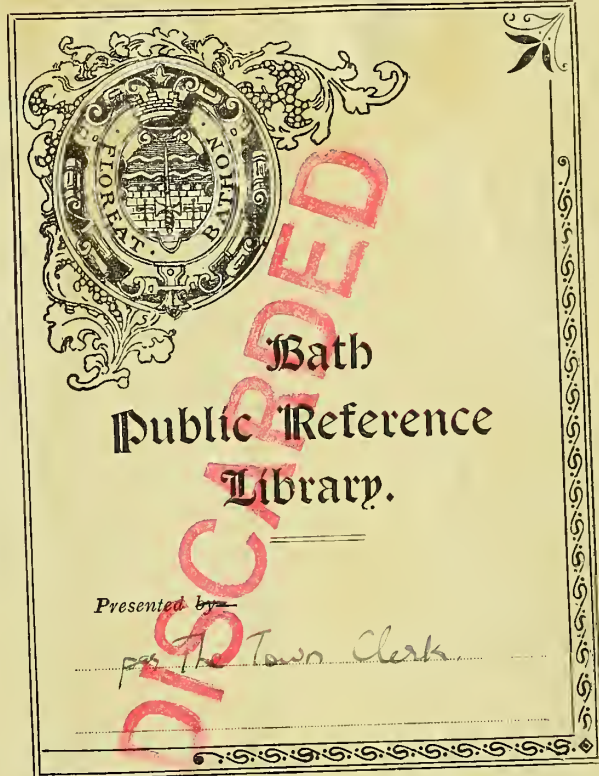
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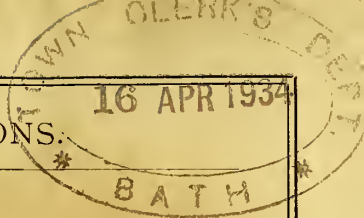
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THE
PUBLIC HEALTH ACTS,
ANNOTATED,
WITH APPENDICES,
CONTAINING THE
VARIOUS INCORPORATED STATUTES
AND
ORDERS OF THE LOCAL GOVERNMENT BOARD,
Etc.

FIRST EDITION, PUBLIC HEALTH ACT, 1875.

BY

W. G. LUMLEY, Esq., LL.M., Q.C., Counsel to the Local Government Board; and
EDMUND LUMLEY, B.A., of the Middle Temple, Barrister-at-Law.

Fifth Edition,

IN TWO VOLUMES,

BY

ALEXANDER MACMORRAN, M.A.,
One of Her Majesty's Counsel,

AND

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VOL. II.
APPENDICES.

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CONTENTS.

VOLUME II.

APPENDIX I.

	PAGE
The Knackers Act, 1786 (26 Geo. 3, c. 71)...	781
The Quarantine Act, 1825 (6 Geo. 4, c. 78)...	783
The Game Act, 1831 (1 & 2 Will. 4, c. 32)...	794
The Knackers Act, 1844 (7 & 8 Vict. c. 87) ...	796
The Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101) ...	797
The Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16) ...	799
The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18) ...	808
The Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20) ...	843
The Baths and Washhouses Act, 1846 (9 & 10 Vict. c. 74) ...	846
The Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14) ...	854
The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15) ...	862
The Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17)...	871
The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34) ...	887
The Baths and Washhouses Act, 1847 (10 & 11 Vict. c. 61) ...	896
The Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65) ...	897
The Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89) ...	907
The Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91) ...	923
The Poor Law Union Charges Act Amendment Act, 1849 (12 & 13 Vict. c. 103) ...	925
The Burial Act, 1857 (20 & 21 Vict. c. 81)...	925
The Public Health Act, 1858 (21 & 22 Vict. c. 97) ...	927
The Public Improvement Act, 1860 (23 & 24 Vict. c. 30) ...	928
The Local Taxation Returns Act, 1860 (23 & 24 Vict. c. 51) ...	929
The Burial Act, 1860 (23 & 24 Vict. c. 64)...	930
The Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106) ...	931
The Burial Act, 1862 (25 & 26 Vict. c. 100) ...	932
The Town Gardens Protection Act, 1863 (26 & 27 Vict. c. 13) ...	933
The Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93)...	935
The Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113) ...	939
The Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130)...	939
The Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119) ...	941
The Gas and Waterworks Facilities Act, 1870 (33 & 34 Vict. c. 70) ...	942
The Tramways Act, 1870 (33 & 34 Vict. c. 78) ...	948
The Fairs Act, 1871 (34 & 35 Vict. c. 12) ...	972
The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41) ...	972
The Local Government Board Act, 1871 (34 & 35 Vict. c. 70) ...	987
The Petroleum Act, 1871 (34 & 35 Vict. c. 105) ...	989
The Infant Life Protection Act, 1872 (35 & 36 Vict. c. 38) ...	995
The Factories (Steam Whistles) Act, 1872 (35 & 36 Vict. c. 61)...	998
The Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77) ...	999

	PAGE
The Borough Funds Act, 1872 (35 & 36 Vict. c. 91)	1000
The Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93)	1002
The Fairs Act, 1873 (36 & 37 Vict. c. 37)	1005
The Gas and Waterworks Facilities Act (1870) Amendment Act, 1873 (36 & 37 Vict. c. 89)	1006
The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63)	1007
The Local Loans Act, 1875 (38 & 39 Vict. c. 83)	1018
The Public Works Loans Act, 1875 (38 & 39 Vict. c. 89)	1028
The Public Works Loans Act, 1876 (39 & 40 Vict. c. 31)... ..	1044
The Commons Act, 1876 (39 & 40 Vict. c. 56)	1044
The Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75)... ..	1059
The Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31)	1070
The Open Spaces (Metropolis) Act, 1877 (40 & 41 Vict. c. 35)	1072
The Canal Boats Act, 1877 (40 & 41 Vict. c. 60)	1073
The Local Taxation Returns Act, 1877 (40 & 41 Vict. c. 66)	1077
The Baths and Washhouses Act, 1878 (41 & 42 Vict. c. 14)	1078
The Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16)	1080
The Public Works Loans Act, 1878 (41 & 42 Vict. c. 18)... ..	1088
The Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77)	1089
The District Auditors Act, 1879 (42 Vict. c. 6)	1101
The Sale of Foods and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30)	1103
The Petroleum Act, 1879 (42 & 43 Vict. c. 47)	1106
The Public Works Loans Act, 1879 (42 & 43 Vict. c. 77)... ..	1109
The Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34)	1110
The Alkali, &c., Works Regulation Act, 1881 (44 & 45 Vict. c. 37)	1115
The Public Works Loans Act, 1881 (44 & 45 Vict. c. 38)... ..	1124
The Petroleum (Hawkers) Act, 1881 (44 & 45 Vict. c. 67)... ..	1125
The Commonable Rights Compensation Act, 1882 (45 Vict. c. 15)	1127
The Baths and Washhouses Act, 1882 (45 & 46 Vict. c. 30)	1130
The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50)	1130
Election Petition Rules under	1143
The Electric Lighting Act, 1882 (45 & 46 Vict. c. 56)	1158
Rules made by Board of Trade under	1170
The Public Works Loans Act, 1882 (45 & 46 Vict. c. 62)	1173
The Lands Clauses (Umpire) Act, 1883 (46 Vict. c. 15)	1174
The Public Works Loans Act, 1883 (46 & 47 Vict. c. 42)... ..	1175
The Factory and Workshop Act, 1883 (46 & 47 Vict. c. 53)	1175
The Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70)	1177
The Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72)	1199
The Canal Boats Act, 1884 (47 & 48 Vict. c. 75)	1200
The Local Loans (Sinking Funds) Act, 1885 (48 & 49 Vict. c. 30)	1201
The Quarry (Fencing) Act, 1887 (50 & 51 Vict. c. 19)	1202
The Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21)... ..	1203
The Allotments and Cottage Gardens (Compensation for Crops) Act, 1887 (50 & 51 Vict. c. 26)	1204
The Markets and Fairs (Weighing of Cattle) Act, 1887 (50 & 51 Vict. c. 27)	1207
The Margarine Act, 1887 (50 & 51 Vict. c. 29)	1209
The Open Spaces Act, 1887 (50 & 51 Vict. c. 32)	1212
The Public Works Loans Act, 1887 (50 & 51 Vict. c. 37)... ..	1215
The Allotments Act, 1887 (50 & 51 Vict. c. 48)	1216
The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58)	1226

CONTENTS.

V

	PAGE
The Local Authorities (Expenses) Act, 1887 (50 & 51 Vict. c. 72) ...	1228
The Electric Lighting Act, 1888 (51 & 52 Vict. c. 12) ...	1228
Rules made by Board of Trade under ...	1231
The Glebe Lands Act, 1888 (51 & 52 Vict. c. 20) ...	1234
The Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25) ...	1234
The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42) ...	1249
The Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62) ...	1255
The Sale of Horseflesh, &c., Regulation Act, 1889 (52 & 53 Vict. c. 11) ...	1259
The Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14) ...	1260
The Arbitration Act, 1889 (52 & 53 Vict. c. 49) ...	1262
The Technical Instruction Act, 1889 (52 & 53 Vict. c. 76) ...	1269
The Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8) ...	1272
The Open Spaces Act, 1890 (53 & 54 Vict. c. 15) ...	1274
The Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16)...	1276
The Tenants Compensation Act, 1890 (53 & 54 Vict. c. 57) ...	1277
The Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60) ...	1278
The Allotments Act, 1890 (53 & 54 Vict. c. 65) ...	1279
The Technical Instruction Act, 1891 (54 & 55 Vict. c. 4)...	1282
The Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891 (54 & 55 Vict. c. 12) ...	1283
The Museums and Gymnasiums Act, 1891 (54 & 55 Vict. c. 22) ...	1284
The Customs and Inland Revenue Act, 1891 (54 & 55 Vict. c. 25) ...	1287
The Brine Pumping (Compensation for Subsidence) Act, 1891 (54 & 55 Vict. c. 40) ...	1288
The Forged Transfers Act, 1891 (54 & 55 Vict. c. 43) ...	1299
The Post Office Act, 1891 (54 & 55 Vict. c. 46) ...	1300
The Schools for Science and Art Act, 1891 (54 & 55 Vict. c. 61) ...	1301
The Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63) ...	1302
The Markets and Fairs (Weighing of Cattle) Act, 1891 (54 & 55 Vict. c. 70) ...	1303
The Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73) ...	1305
The Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75) ...	1306
The Mortmain and Charitable Uses Act Amendment Act, 1892 (55 & 56 Vict. c. 11)...	1315
The Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29) ...	1316
The Alkali, &c., Works Regulation Act, 1892 (55 & 56 Vict. c. 30) ...	1318
The Forged Transfers Act, 1892 (55 & 56 Vict. c. 36) ...	1319
The Railway and Canal Traffic Act, 1892 (55 & 56 Vict. c. 44) ...	1320
The Public Libraries Act, 1892 (55 & 56 Vict. c. 53) ...	1320
The Public Works Loans Act, 1892 (55 & 56 Vict. c. 61)...	1332
The Shop Hours Act, 1892 (55 & 56 Vict. c. 62) ...	1332
The Police Act, 1893 (56 & 57 Vict. c. 10) ...	1334
The Public Libraries (Amendment) Act, 1893 (56 & 57 Vict. c. 11) ...	1335
The Rivers Pollution Prevention Act, 1893 (56 & 57 Vict. c. 31) ...	1336
The Barbed Wire Act, 1893 (56 & 57 Vict. c. 32) ...	1337
The Shop Hours Act, 1893 (56 & 57 Vict. c. 67) ...	1338
The Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68) ...	1339
The Public Works Loans Act, 1894 (57 & 58 Vict. c. 11)...	1345
The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) ...	1345
The Shop Hours Act, 1895 (58 & 59 Vict. c. 5) ...	1353
The Lands Clauses (Taxation of Costs) Act, 1895 (58 & 59 Vict. c. 11)...	1354
The Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37) ...	1354

APPENDIX II.

ORDERS OF LOCAL GOVERNMENT BOARD, ETC.

ACCOUNTS AND AUDIT.

	PAGE
22 March, 1880.	Circular as to following General Order 1364
22 March, 1880.	General Order—Accounts of Local Boards 1367
16 June, 1884.	Memorandum—Purchase of Periodical Publications ... 1373
July, 1894.	Instructions—Appeals against District Auditors by Members and Officers of Local Authorities 1374
26 July, 1895.	Circular as to following General Order 1375
20 May, 1895.	General Order—Audit of Accounts—Rural District Councils 1377
29 July, 1895.	Circular as to following General Order 1378
26 July, 1895.	General Order—Audit of Accounts—Joint Committees of District Councils, &c. 1380

ALLOTMENTS.

30 May, 1888.	Circular as to Model Regulations... .. 1382
30 May, 1888.	Model Regulations with respect to Allotments (Memo- randum prefixed)... .. 1383
	<i>See also</i> "Compulsory Purchase of Land."

ALTERATION OF AREAS.

17 September, 1889.	Circular as to following Regulations 1388
14 September, 1889.	Regulations as to Inquiries and Notices under section 57 of Local Government Act, 1888 1388

CANAL BOATS.

20 March, 1878.	Regulations under the Canal Boats Act, 1877 1391
-----------------	---

CHOLERA.

		PAGE
30 August, 1890.	Circular as to following General Order	1399
28 August, 1890.	General Order—Cholera Regulations	1400
26 August, 1892.	Memorandum—Precautions against Cholera	1404
6 September, 1892.	Circular as to following General Order	1406
6 September, 1892.	General Order—Amending Cholera Regulations	1406
7 August, 1893.	Circular as to following General Order	1408
5 August, 1893.	General Order—Cholera Regulations (Bedding and Clothing)	1409
13 September, 1893.	General Order—Cholera Regulations (Bedding and Clothing)	1411
	<i>And see "Diseases and Hospitals;" "Officers."</i>	

COMPULSORY PURCHASE OF LAND.

23 May, 1895.	Circular as to following General Order	1412
May, 1895.	Memorandum referred to in above Circular	1412
22 May, 1895.	General Order—Local Government Act, 1894, s. 9—Regulations and Adaptations	1414
	<i>And see "Allotments."</i>	

CONFERENCES.

14 May, 1891.	Circular as to following General Order	1419
13 May, 1891.	General Order—Local Government Conferences	1420

DAIRIES, COWSHEDS AND MILKSHOPS.

15 June, 1885.	Dairies, Cowsheds and Milkshops Order of 1885	1422
3 November, 1886.	Circular (Town Councils) with Amending Order of 1886	1425
1 November, 1886.	Dairies, Cowsheds and Milkshops Amending Order of 1886	1427
7 March, 1889.	Circular to Sanitary Authorities where no Dairy Regulations in force	1428

DISEASES AND HOSPITALS.

12 September, 1889.	General Order—Certificates under Infectious Disease (Notification) Act, 1889... ..	1429
13 September, 1889.	Memorandum on above General Order	1431
26 August, 1892.	Memorandum—Precautions against Epidemic Disease... ..	1431
31 January, 1893.	Memorandum—Precautions against Small Pox... ..	1435
January, 1895.	Memorandum—Isolation Hospitals	1437
	<i>And see "Cholera."</i>	

ELECTIONS.

		PAGE
24 February, 1896.	Circular as to Election of Urban District Councillors in 1896	1439
21 February, 1896.	General Order—Election of Urban District Councillors	1439
19 February, 1896.	General Order—Election of Rural District Councillors	1465

ELECTRIC LIGHTING.

1889.	Board of Trade Regulations for Public Safety	1231
August, 1890.	Board of Trade Rules—Applications for Licenses and Provisional Orders	1170

GAS AND WATERWORKS.

See "Provisional Orders."

HOUSING OF THE WORKING CLASSES.

2 October, 1890.	General Order—Forms of Advertisements and Notices...	1492
------------------	--	------

MARGARINE.

24 December, 1887.	Circular—Registration of Manufactories... ..	1495
22 December, 1887.	General Order—Registration under Margarine Act, 1887	1495

OFFICERS.

23 March, 1891.	General Order—(Urban Authorities) Regulations as to Medical Officers of Health and Inspectors of Nuisances	1497
23 March, 1891.	General Order—(Rural Authorities) Regulations as to Medical Officers of Health and Inspectors of Nuisances	1505

PROVISIONAL ORDERS.

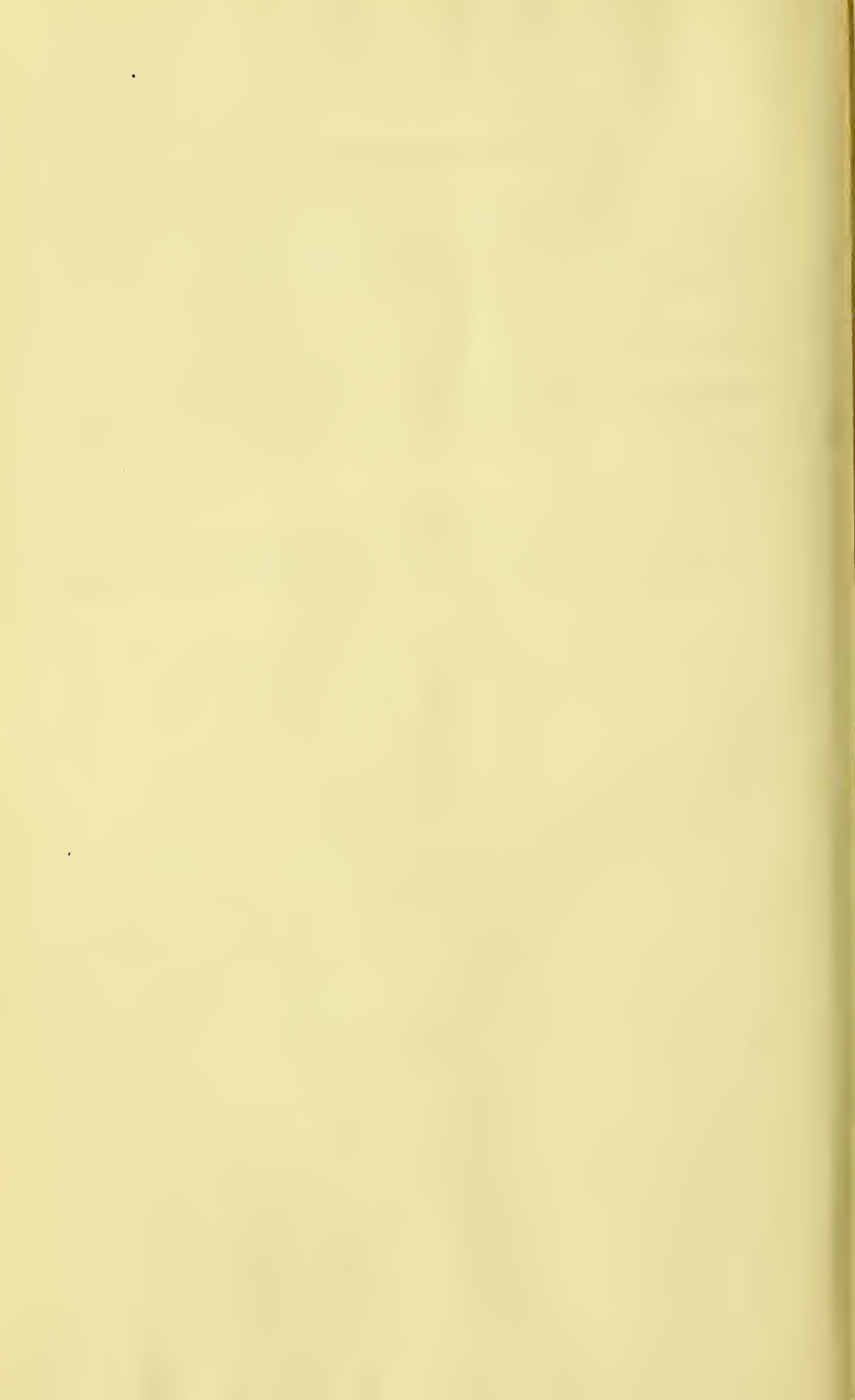
7 September, 1891.	General Order—Regulations as to Proceedings for Provisional Orders authorising Gas Undertaking by Urban Sanitary Authorities	1512
16 September, 1895.	Circular of Local Government Board to Urban District Councils	1515
16 September, 1895.	Circular of Local Government Board to Town Councils	1516

PROVISIONAL ORDERS—*continued.*

	PAGE
16 September, 1895. Circular of Local Government Board to Rural District Councils	1517
16 September, 1895. Instructions as to Applications for Provisional Orders under the Public Health Act, 1875	1518
16 September, 1895. Instructions as to Applications by Urban District Councils for Provisional Orders to Confirm Improvement Schemes	1521
16 September, 1895. Instructions as to Representations by Town Councils for the alteration of the Boundaries of Boroughs... ..	1524
16 September, 1895. Supplemental Instructions with respect to representations for the alteration of Borough Boundaries	1525

TRAMWAYS.

August, 1886.	Board of Trade Rules for carrying Tramway Act, 1870, into effect	1528
---------------	---	------



ADDENDA ET CORRIGENDA IN VOLUME II.

Page 781, last line of note (a), for "section 146" read "section 142."

Page 808, third line of note (a), for 23 & 24 Vict. c. 15 read 23 & 24 Vict. c. 106, and in same and following line strike out 32 & 33 Vict. c. 18.

Page 837, line 11 from bottom, for p. 812 read p. 813.

Page 906, first line of note (d), for "Parliamentary Documents Deposit Act, 1857" read "Parliamentary Documents Deposit Act, 1837."

Page 1007, first line of note (e), for 43 & 44 Vict. c. 30 read 42 & 43 Vict. c. 30.

Page 1028, fifth line of note (a), after 50 & 51 Vict. c. 37 insert 55 & 56 Vict. c. 61, and transfer 51 & 52 Vict. c. 39 to the sixth line after 49 & 50 Vict. c. 55.

Page 1044, fifth line of note (a), strike out 39 & 40 Vict. c. 31, and in seventh line insert 50 & 51 Vict. c. 37 after 46 & 47 Vict. c. 42.

Page 1062, second line of note (g), for "substantial" read "substituted."

Page 1069, second line of note (i), for 11 & 12 Vict. c. 109 read 10 & 11 Vict. c. 109. Third line of note (p), for 52 & 53 Vict. c. 41 read 51 & 52 Vict. c. 41.

CASES DECIDED WHILST THE WORK WAS GOING THROUGH THE PRESS.

VOLUME II.

Page 821, line 11 of note (b)—After references to *Caledonian Railway v. Walker's Trustees*, add "*Kirby v. Harrogate School Board*, W. N. [1896], 12 (7); 100 L. T. Newsp. 337; 60 J. P. 182."

Page 838, last line—Add "*Dunhill v. North Eastern Railway Company* [1896], 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. (N.S.) 644; 44 W. R. 231; 12 T. L. R. 91."

Page 861, lines 1 and 2—With reference to the proviso to section 36 of the Markets and Fairs Clauses Act, 1847, add a note: "See *Attorney-General of the Duchy of Lancaster v. Liverpool New Cattle Market Company*, W. N. [1896], 30 (2); 12 T. L. R. 261."

Page 889, line 23—For references to *Allen v. London County Council* substitute “[1895], 2 Q. B. 587; 64 L. J. M. C. 228; 73 L. T. (N.S.) 101; 43 W. R. 674; 59 J. P. 644; 11 T. L. R. 537;” and add to note “*London County Council v. Pryor*, W. N. [1896], 15 (9); 31 L. J. Notes, 114; 12 T. L. R. 241.”

Page 910, second line of note (b)—After *Hill v. Somerset*, 51 J. P. 356, insert “but see *Brotherton v. Tittensor*, 60 J. P. 72,” and in ninth line, after “annoyance,” insert “And by a bye-law purporting to be made by a county council for the good rule and government of the county under section 16 of the Local Government Act, 1888, and prohibiting the singing or reciting of any profane or obscene song or ballad or the use of any profane or obscene language in any public place, without adding ‘to the annoyance of the public,’ or words to the like effect, was held invalid for that reason. *Strickland v. Hayes*, 60 J. P. 164; 12 T. L. R. 199.”

Page 913, note (f)—Add “And a similar enactment has been held in Scotland not to apply to blasting in a quarry. *Murray v. Keith*, 22 Ct. Sess. Cas., 4th ser. (J. C.) 17; 32 Scottish Law Reporter 70.”

Page 961, last line of note (b)—Add 59 J. P. 697, affirmed in C. A., 60 J. P. 23; 12 T. L. R. 101.

Page 1011, line 3 from bottom — After *Buckler v. Wilson*, add references “[1896], 1 Q. B. 83; 65 L. J. M. C. 18; 73 L. T. (N.S.) 588; 60 J. P. 118; 12 T. L. R. 94.”

Page 1013, note (f)—Add to end of note “See also to the same effect, *Fortune v. Hanson* [1896], 1 Q. B. 202; 60 J. P. 88; 12 T. L. R. 164.”

Page 1013, note (h)—Add “The certificate, however, is not conclusive, and if the defendant tenders himself as a witness and is examined, the justices may prefer his evidence to the certificate, on the question of fact. *Hewitt v. Taylor*, W. N. (1896) 13 (1); 31 L. J. Notes 115; 74 L. T. (N.S.) 51; 40 Sol. Journ. 277; 60 J. P. 116 n; 12 T. L. R. 192.”

Page 1015, third paragraph of section 27 of the Sale of Food and Drugs Act, 1875—Add a note “The summons need not be served within twenty-eight days of the purchase of the article, if not purchased for test purposes, as required by section 10 of the 42 & 43 Vict. c. 30, *post*. *Cook v. White*, W. N. (1896) 14 (2); 31 L. J. Notes 115; 74 L. T. (N.S.) 53; 60 J. P. 116 n; 12 T. L. R. 192.”

Page 1063, line 10—As to the consent of the Local Government Board, add a note, “This consent must be obtained every time fresh proceedings are taken, although in respect of a continuance of the same pollution. See *Ex parte Mersey and Irwell Watershed Joint Committee*, 59 J. P. 756.”

Page 1094, twenty-fourth line of note (a)—After “use of these engines had been conducted,” add “see also *Bishop Auckland Urban District Council v. Murphy*, 60 J. P. 153.”

Page 1199, note (c)—Add at end “and see *Attorney-General v. Trustees of London Parochial Charities*, W. N. (1896) 8 (3); 31 L. J. Notes 83; 100 L. T. 358; 12 T. L. R. 168.”

APPENDIX.

THE KNACKERS ACT, 1786.

(26 GEO. 3, CAP. 71.)*(a)*

An Act for Regulating Houses and other Places kept for the purpose of Slaughtering Horses.

WHEREAS the practice of stealing horses, cows, and other cattle hath of late years increased to an alarming degree, and hath been greatly facilitated by certain persons of low condition who keep houses or places for the purpose of slaughtering horses and other cattle : For remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the twentieth day of *July* in the year of our Lord one thousand seven hundred and eighty-six, no person or persons shall keep or use any house or place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, which shall not be killed for butchers meat, without first taking out a licence for that purpose at the general quarter sessions held for the county, riding, city, town, district, division, or liberty wherein such slaughtering house or place shall be situate ; and the justices of the peace, at their general quarter sessions assembled, are hereby authorized and empowered to grant^(b) such licences as aforesaid, upon a certificate^(c) under the hands and seals of the minister and churchwardens, or overseers, or of the minister and two or more substantial householders of the parish wherein the person or persons applying for such licence shall dwell, that such person or persons is or are fit and proper to be trusted with the management and carrying on such business as aforesaid : Provided always, that in case of the death of any person to whom such licence as aforesaid shall be granted, it shall and may be lawful for the widow or personal representative of such person so dying to carry on the said business until the then next ensuing general quarter sessions of the peace.^(d)

Appendix.
Preamble.

From July 20, 1786, every person keeping a slaughtering house to take out a license, &c.

II. And . . . every such licence shall be signed by the justices of the peace assembled at such general quarter sessions, or by the major part of them ; and a copy of every such licence shall be entered in a book to be kept for that purpose by the clerk of the peace of the county wherein the same shall be so granted as aforesaid ; and . . . all and every person and persons shall have liberty at all times (*Sunday* excepted), between the hours of ten and twelve of the clock in the forenoon, to search the office of such clerk of the peace wherein any such copy shall be entered or kept, and to make an extract or extracts from the same, paying for every such search the sum of sixpence ; and all and every person and persons so

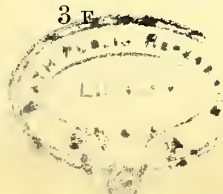
Justices to grant licenses, which are to be entered, &c.

(a) See the Local Government Act, 1894, ss. 27 (2) and 32, *ante*, pp. 728, 730, and see also the Public Authorities Protection Act, 1893, *ante*, p. 692. The short title of this Act is authorised by the Short Titles Act, 1892 (55 & 56 Vict. c. 10). This Act is amended by the 7 & 8 Vict. c. 87, *post*, and repealed as to the metropolis by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 146.

(b) The powers, duties, and liabilities of quarter sessions in relation to these licences are now transferred to the district or county borough council by the Local Government Act, ss. 27 (2) and 32, *ante*, pp. 728, 730. Licences granted under this Act were limited to continue in force for one year only from their date by 7 & 8 Vict. c. 87, s. 1, *post*. Power to cancel a licence is given by section 2 of the same Act, *post*.

(c) This certificate is not required for the renewal of a licence when once it has been granted. See 7 & 8 Vict. c. 87, s. 1, *post*.

(d) Apparently this proviso will now authorise the widow or personal representative in carrying on the business until the expiration of the licence at the end of the year for which it is issued.



Appendix.

Persons licensed to affix to their houses the words herein mentioned.

licenced as aforesaid shall cause to be painted or affixed over the door or gate of the house or place where he, she, or they shall carry on the said business, in large legible characters, his, her, and their name and names with the words licensed for slaughtering horses pursuant to an Act passed in the twenty-sixth year of His Majesty King George the Third.(a)

* * * * *

Persons slaughtering horses, &c., without license, &c., guilty of felony.

VIII. And . . . if any person or persons keeping or using any such slaughtering house or place as aforesaid shall, at any time from and after the twentieth day of *July*, one thousand seven hundred and eighty six, slaughter any horse, mare or gelding, foal or filly, ass or mule, or any bull, cow, heifer, ox, calf, sheep, hog, goat, or other cattle for any other purpose than for butchers meat, or shall flay any horse, mare, gelding, foal, filly, ass, mule, bull, cow, heifer, ox, calf, sheep, hog, goat, or other cattle brought dead to such slaughtering house or other place without taking out such licence . . . such person or persons so offending in either of the said cases, being thereof convicted, shall be adjudged, deemed, and taken to be guilty of felony. . . . (b)

* * * * *

Penalty on persons lending houses for the purpose of slaughtering.

XIII. And . . . if any person or persons shall occasionally lend any house, barn, stable, or other place for the purpose of slaughtering or killing any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle which shall not be killed for butchers meat, without taking out such licence as aforesaid, and shall be thereof convicted before any justice of the peace for the county, riding, city, town, district, division, or liberty wherein such person or persons shall reside, upon the oath of two credible witnesses, he, she, or they shall forfeit, upon conviction, for every such offence any sum not exceeding twenty pounds . . . one moiety thereof to be paid to the informer and the other moiety to the poor of the parish where the offence shall be committed; and which said last-mentioned moiety shall, upon payment thereof, be immediately transmitted by the justice so convicting to the overseers of the poor of the said parish, or one of them; and in case such penalty shall not be forthwith paid such justice shall commit the offender to the common gaol or house of correction. . . . (c)

* * * * *

Act not to extend to curriers, &c., killing distempered horses, &c.

XIV. Provided always, that this Act shall not extend to any currier, felt-maker, tanner, or dealer in hides who shall kill any distempered or aged horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle for the *bonâ fide* purpose of selling, using, or curing the hide or hides thereof in the course of their respective trades, nor to any farrier employed to kill aged and distempered cattle, nor to any person or persons who shall kill any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle of their own or other cattle, or purchasing any dead horse or other cattle to feed their own hounds or dogs, or giving away the flesh thereof for the like purpose.

* * * * *

XVIII. [*General Issue and Treble Costs.*] . . . (d)

(a) By section 7 of the Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), after reciting so much of this section as requires licenced persons to affix their names and these words to their houses, it is enacted that any person so licensed as aforesaid who shall refuse or neglect to comply with the said recited provision of the said recited Act shall forfeit and pay for such offence a penalty not exceeding five pounds, and shall forfeit and pay a like penalty for every day during which such refusal or neglect shall continue, such penalties to be recovered as penalties under this Act are directed to be recovered, *i.e.*, by sections 14 and 18, and by sections 15—17, now repealed and superseded by the Summary Jurisdiction Act, 1884.

(b) The punishment imposed by this section was fine and imprisonment and whipping, or transportation for not more than seven years. Penal servitude is substituted for transportation by 20 & 21 Vict. c. 3. Whipping for such an offence may be regarded as obsolete.

(c) The remainder of this section, as well as the minimum penalty originally imposed thereby, is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4.

(d) See now the Public Authorities Protection Act, 1893, *ante*, p. 692.

THE QUARANTINE ACT, 1825.

Appendix.

[6 GEO. 4, CAP. 78.](e)

An Act to repeal the several Laws relating to the performance of Quarantine and to make other Provisions in lieu thereof. [27th June, 1825.]

* * * * *

II.(f) All vessels, as well His Majesty's ships of war as others, coming from or having touched at any place from whence His Majesty, by and with the advice of his or their privy council, shall have adjudged and declared it probable that the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects may be brought, and all vessels and boats receiving any person, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever, from or out of any vessel so coming from or having touched at such infected place as aforesaid, whether such persons, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or other articles, shall have come or been brought in such vessels, or such persons shall have gone, or articles have been put on board the same, either before or after the arrival of such vessels at any port or place in the United Kingdom, or the islands of *Guernsey, Jersey, Alderney, Sark, or Man*, and whether such vessels were or were not bound to any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever on board of any vessels so coming from or having touched at such infected place as aforesaid, or on board of any such receiving vessels or boats as aforesaid, shall be and be considered to be liable to quarantine within the meaning of this Act, and of any order or orders which shall be made by His Majesty, by and with the advice of his privy council concerning quarantine and the prevention of infection, from the time of the departure of such vessels from such infected place as aforesaid, or from the time when such persons, goods, wares, merchandize, packets, packages, baggage, wearing apparel, books, letters, or other articles shall have been received on board respectively; and all such vessels and boats as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandize, and all other articles as aforesaid, whether coming or brought in such vessels or boats from such infected place as aforesaid, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandize, and other articles as aforesaid, on board such receiving vessel or boat as aforesaid, shall, upon their arrival at any such port or place, be obliged to perform quarantine in such place or places, for such time, and in such manner as shall from time to time be directed by His Majesty, by his order or orders in council, notified by proclamation, or published in the *London Gazette*; and until such vessels and boats, persons, goods, wares, and merchandize, and other articles as aforesaid, shall have respectively performed, and shall be duly discharged from quarantine, no such person, goods, wares, or merchandize, or other articles as aforesaid, or any of them, shall, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, come or be brought on shore, or go and be put on board any other vessel or boat, in order to come or be brought on shore in any such port or place, although such vessels so coming from such infected place as aforesaid may not be bound to any port or place in the United Kingdom, or the islands aforesaid, unless in such manner and in such cases, and by such license as shall be directed or permitted by such order or orders made by His Majesty, in council as aforesaid; and all such vessels and boats, whether coming from such infected place as aforesaid, or being otherwise liable to quarantine as aforesaid, and all persons (as well pilots as others), (g) goods, wares, and merchandize, and other articles as aforesaid, whether

What vessels shall be liable to quarantine.

(e) See the Public Health Act, 1875, s. 343, *ante*, p. 425, and Schedule V. (re-enacted statutes), in which reference is made to this Act.

(f) The preamble was repealed by 53 & 54 Vict. c. 33. Section 1 was repealed by the Statute Law Revision Act, 1873 (36 & 37 Vict. c. 91), and parts of other sections by the Statute Law Revision (No. 2) Act, 1881 (51 & 52 Vict. c. 57). The Act is here printed as it remains in force, with marginal notes according to the Second Edition of the Statutes Revised, vol. 4, p. 589.

(g) By Order in Council, dated 26th August, 1893, every medical officer and every deputy medical officer of health may, in the performance of his duties as such officer, go on board

Appendix.

coming or brought in such vessels or boats, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands, aforesaid, and although such vessels or boats shall not be bound to any port or place in the United Kingdom, or the islands aforesaid, and all commanders, masters, or other persons, having the charge or command of any such vessels or boats, whether coming from any infected place, or being otherwise liable to quarantine as aforesaid, shall be subject to all provisions, rules, regulations and restrictions contained in this Act, or in any order or orders which shall be made by His Majesty in council, as aforesaid, concerning quarantine and the prevention of infection, and to all the pains, penalties, forfeitures, and punishments contained in this Act, for any breach or disobedience thereof, or of any order or orders of His Majesty in council made under the authority thereof.(a)

Power for privy council to order vessels coming from America or the West Indies, when the yellow fever, &c., prevails there, to go to certain places without being liable to quarantine.

III. It shall and may be lawful for His Majesty, by his order in council, or for the lords or others of his privy council, or any two or more of them, by their order from time to time, as often as they may see reason to apprehend that the yellow fever or other highly infectious distemper prevails on the continent of *America*, or in the *West Indies*, to require that every vessel coming from or having touched at any port or place on the continent of *America* or in the *West Indies*, shall come to an anchor at certain places to be appointed from time to time by the commissioners of His Majesty's customs (who are hereby authorised to make such appointment), for the purpose of having the state of health of the crew of such vessel ascertained before such vessel shall be permitted to enter the port whereto she shall be bound, or any other port of the United Kingdom ; but that such vessel shall not be deemed liable to quarantine unless it shall be afterwards specially ordered under that restraint.

IV.(b)

* * * *

Goods specified in any order of council and the vessels bringing the same shall be subject to quarantine, as also all vessels arriving from any port under suspicious circumstances as to infection.

V. And whereas certain sorts of goods and merchandize are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into the United Kingdom, or the islands aforesaid ; Be it enacted, that all such goods and merchandize as shall be particularly specified for that purpose in any order or orders made by His Majesty in council, concerning quarantine and the prevention of infection as aforesaid, which shall be brought or imported into any port or place in the United Kingdom, or the islands aforesaid, from any foreign country or place, in any vessel whatever, and the vessels in which the same shall be brought, and also all vessels which shall arrive from any port or place whatever, under any alarming or suspicious circumstances as to infection, shall be subject and liable to such regulations and restrictions as shall be made by such order or orders of His Majesty in council as aforesaid, respecting the same.

The privy council may make such order as they shall think necessary upon emergencies :

VI. It shall and may be lawful for the lords and others of His Majesty's privy council, or any two or more of them, to make such order as they shall see necessary and expedient upon any unforeseen emergency, or in any particular case or cases, with respect to any vessel arriving and having any infectious disease or distemper on board or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although such vessels shall not have come from any place from which His Majesty, by and with the advice of his privy council, may have adjudged and declared it probable that the plague or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares, and merchandize, and other articles as aforesaid on board the same, and in case of any infectious disease or distemper appearing or breaking out in the United Kingdom, or the islands aforesaid, to make such orders and give such direction, in order to cut off all communication between any persons infected with any such disease

any vessel under, or liable to, quarantine, without being in any way subject to the restraints or quarantine. St. R. & O. (1893), p. 483.

(a) These and the other provisions of this Act are now to apply to every vessel having on board any person affected with a dangerous or infectious disease, though such vessel has not commenced her voyage or has come from or is bound to a port in the United Kingdom. See the Public Health Act, 1875, Schedule V., Part III., *ante*, p. 451. Other provisions as to persons arriving in ships from infected places are contained in the Customs Law Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 234. See note (f), *post*, p. 785.

(b) This section applies to Ireland only.

or distemper, and the rest of His Majesty's subjects, as shall appear to the said lords or others of His Majesty's privy council, or any two or more of them, to be necessary and expedient for that purpose, and likewise to make such orders as they shall see fit, for shortening the time of quarantine to be performed by particular vessels or particular persons, goods, wares, merchandize, or any other articles, or for absolutely or conditionally releasing them or any of them from quarantine; and all such orders so made by the lords or others of the privy council, or any two or more of them as aforesaid, shall be as good, valid, and effectual, to all intents and purposes, as well with respect to the commander, master, or other person having the charge of any vessel, and all other persons on board the same, as with respect to any other persons having any intercourse or communication with them, and to the penalties, forfeitures, and punishments to which they may respectively become liable, as any order or orders made by His Majesty, by and with the advice of his privy council, concerning quarantine, notified by proclamation or published in the *London Gazette*.

Appendix.

also orders for shortening the time of quarantine or for discharge therefrom.

Regulations for vessels in which infection shall appear within or without the Straights of Gibraltar.

VII. If the plague, or such other infectious disease or distemper as aforesaid, shall appear on board any vessel within or without the Straights of *Gibraltar*, then the commander, master, or other person having the charge or command thereof, shall immediately proceed to such place as His Majesty, by and with the advice of his privy council, shall from time to time direct and appoint; where being arrived, he shall make known his case to some officer of the customs there, who shall with all possible speed send intelligence thereof to the commissioners of the customs in the port of *London*,^(c) to the end that such precautions may be used to prevent the spreading of the infection, as the case shall require; and the said vessel shall there remain until directions shall be given thereto by the lords or others of His Majesty's privy council, or any two or more of them; nor shall any of the crew or passengers on board thereof go on shore; and such master and every other person on board such vessel shall obey such directions as he shall receive from the lords and others of His Majesty's privy council, or any two or more of them as aforesaid; and the said commander, master, or any other person on board such vessel as aforesaid, who shall not act conformably to the provisions and regulations herein directed, or shall act in disobedience to such directions as shall be received on board such vessel from the lords or others of the privy council, or any two or more of them as aforesaid, shall forfeit the sum of one hundred pounds.^(d)

VIII. That every commander, master, or other person having the charge of any vessel liable to the performance of quarantine, shall be and is hereby required, at all times, when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, to hoist a signal to denote that his vessel is liable to the performance of quarantine, which signal shall^(e) in the daytime, if the said vessel shall have a clean bill of health, a large yellow flag, of six breadths of bunting, at the maintop mast-head, and if such vessel shall not have a clean bill of health, then a like yellow flag, with a circular mark or ball, entirely black in the middle thereof, whose diameter shall be equal to two breadths of bunting; and in the night-time the signal shall in both cases be a large signal lanthorn with a light therein (such as is commonly used on board His Majesty's ships of war), at the same mast-head; and such commander, master, or other person shall keep such signals respectively, as the case shall be, hoisted during such time as the said vessel shall continue within sight of such other vessel, or within two leagues of the said coasts or islands, and while so in sight, or within such distance, until such vessel so liable to quarantine as aforesaid shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander, master, or other person having charge of such ship or vessel so liable to the performance of quarantine shall forfeit and pay for every such offence the sum of one hundred pounds.^(f)

Masters of vessels liable to quarantine to make signals on meeting other vessels at sea, or while within two leagues of the United Kingdom or Guernsey, &c., on penalty of 100*l*.

(c) See the Public Health Act, 1875, s. 291, *ante*, p. 387, now repealed by the Public Health (London) Act, 1891, 54 & 55 Vict. c. 76, and replaced by section 111 of that Act.

(d) This penalty may be reduced. See 29 & 30 Vict. c. 90, s. 52, re-enacted in Public Health Act, 1875, Schedule V., *ante*, p. 454. See also in note (f), *post*. As to the person in whose name the proceedings are to be taken, see section 33, *post*.

(e) "be" is omitted; so in Parliament Roll. (Statutes 2nd Rev. Edit., p. 593 n).

(f) The 39 & 40 Vict. c. 36, s. 234, provides that the Privy Council may from time to time

Appendix.

Masters of vessels to hoist certain signals when plague or infectious disease is on board, on penalty of 100*l*.

IX. Every commander, master, or other person having the charge of any vessel on board whereof the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects shall actually be, shall be and is hereby required at all times when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of *Guernsey, Jersey, Alderney, Sark, or Man*, to hoist a signal to denote that his vessel has the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects actually on board thereof, which signal shall be in the day-time a flag of yellow and black, borne quarterly, of eight breadths of bunting, at the maintop mast-head; and in the night-time, the signal shall be two large signal lanthorns, such as are commonly used on board of His Majesty's ships of war, one over the other, at the same mast-head; and such commander, master, or other person shall keep such signal hoisted during such time as the said vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall continue within sight of such other vessel, or within two leagues of the coasts or islands aforesaid, while so in sight or within such distance, until such vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure thereof such commander, master, or other person having charge of such vessel shall forfeit and pay for every such offence the sum of one hundred pounds.^(a)

Penalty on persons hoisting signals when not liable, 50*l*.

X. If any commander, master, or other person having the charge or command of any vessel, and knowing that the same is not liable to the performance of quarantine, shall hoist such signal as aforesaid, or either of them, by day or night respectively, such commander or other person as aforesaid shall forfeit and pay the sum of fifty pounds.^(a)

Masters of vessels, on their arrival from foreign parts, to give to the pilots an account of the places at which they shall have loaded and touched, on penalty of 100*l*. Pilots to give notice of any proclamation or order in council requiring the performance of quarantine, on penalty of 100*l*.

XI. Every commander, master, or other person having the charge of any vessel coming from foreign parts, shall give to the pilot who shall go on board such vessel a written paper, containing a true account of the names of the place and country at which such vessel shall have loaded, and also of all the places at which any such vessel shall have touched on the homeward voyage, on pain of forfeiting the sum of one hundred pounds^(a) for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in council, made after the departure of any vessel from the United Kingdom and the said islands, and then in force, vessels coming from any place mentioned in any such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person aforesaid, of such vessel, on pain of forfeiting the sum of one hundred pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal, according to the provisions of this Act, and under the penalties in this Act contained for any neglect or refusal in respect of hoisting such signals.^(b)

Master to give notice if any articles on board on penalty of 50*l*., and pilot to give notice if any of them are liable to quarantine on penalty of 100*l*. Master thereupon to hoist the proper signal.

XII. Every commander, master, or other person having the charge of any vessel coming from foreign parts, which shall not be liable to quarantine in respect of the place from whence such vessel comes, shall give to the pilot who shall go on board of such vessel a written paper, containing a true account of the different articles composing the cargo of such vessel, on pain of forfeiting the sum of fifty pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in council then in force, vessels having on board any of the articles mentioned in such paper shall be

require that no person shall land from a ship coming from a place infected with yellow fever or other infectious disease until the officers of customs have examined into the state of health of the persons on board and given permission to land, any person being liable to a penalty of not exceeding 100*l*. for disobedience; and the master or pilot is to be liable to the like penalty for not hoisting the prescribed signal; these penalties, as well as penalties under 6 Geo. 4, c. 78, shall be subject to reduction to any sum not exceeding 100*l*., recoverable before a stipendiary or two justices, who may commit on default of payment for a term not exceeding six months.

(a) See note (d), p. 785, and note (e), p. 785.

(b) See note (d), p. 785.

liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person having the charge of such vessel, on pain of forfeiting one hundred pounds for any neglect therein, and such commander or other person shall thereupon hoist a signal, according to the provisions and under the respective penalties in this Act contained, for any neglect or refusal in respect of hoisting such signals; and in case any pilot shall bring or cause to be brought or conducted any vessel liable to the performance of quarantine, into any place which is not or shall not be specially appointed for the reception of vessels so liable, after receiving such paper as aforesaid, whereby it shall have been made to appear that such vessel was liable to the performance of quarantine, or without requiring and receiving such paper as aforesaid, unless compelled thereto by stress of weather, adverse winds, or accidents of the sea, such pilot shall for every such offence forfeit and pay the sum of two hundred pounds.(b)

XIII. If any pilot being on board, or any commander, master, or other person having the charge of any vessel coming from foreign parts, whether such vessel shall be liable to quarantine or not, shall be required by any officer of the customs, authorised to act in the service of quarantine, to bring to such vessel, to the end that the commander, master, or other person having the charge thereof may be interrogated, according to the provision of this Act, and shall neglect or refuse to bring to such vessel, as soon as it can be done with safety, in obedience to such requisition, every such pilot, commander, master, or other person having the charge of any such vessel shall for every such offence forfeit and pay the sum of one hundred pounds.(b)

XIV. When any country or place shall be known or suspected to be infected with the plague or other infectious disease or distemper as aforesaid, or when any order or orders shall be made by His Majesty in council concerning quarantine and the prevention of infection as aforesaid, then, and in such case, as often as any vessel shall attempt to enter into any port or place in the United Kingdom, or of the isles of *Guernsey, Jersey, Alderney, Sark, or Man*, whether such port shall have been appointed for the performance of quarantine or not, the superintendent or assistant at such port or place, or if not, the principal officer of His Majesty's customs at such port or place, or such officer of the customs as shall be authorised to act in that behalf, shall go off to such vessel, and shall, at a convenient distance from such vessel, demand of the commander, master, or other person having charge of such vessel, and such commander, master, or other person shall, upon such demand, give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall by such superintendent or his assistant, or other officer of the customs authorised as aforesaid, be required, to all such questions or interrogatories as shall be put to him by virtue and in pursuance of such regulations and directions as His Majesty by order in council shall be pleased to prescribe; and in case such commander or master or other person having charge of such vessel shall, upon such demand made as aforesaid, refuse to make a true discovery in any of the particulars concerning which he shall be interrogated in manner as aforesaid, or in case he shall not be required to answer such questions or interrogatories upon oath, shall give a false answer to any such question or interrogatory as aforesaid, such commander, master, or other person having charge of such vessel for every such offence shall forfeit and pay the sum of two hundred pounds.(b)

XV. In case it shall appear upon such examination or otherwise, that such vessel is under such circumstances as shall render it liable to perform quarantine, and that the port or place where it so arrived, or at which it attempts to enter as aforesaid, is not the port or place where it ought to perform quarantine, in which case it shall and may be lawful to and for the officers of any of His Majesty's ships of war, or any of His Majesty's forts or garrisons, and all other His Majesty's officers, upon notice thereof given to them, or any of them respectively, and to and for any other person or persons whom they shall call to their aid and assistance, and such officers and other persons are hereby required to oblige such vessel to go and repair to such place as hath been or shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns upon such vessel, or by any other kind of necessary force whatsoever; and in case any such vessel shall come from, or shall have touched at any place infected by the plague or such other

Appendix.

Penalty on pilots conducting vessel liable to quarantine to any other place than that appointed for their reception, after receiving notice, or not requiring notice, 200*l*.

Pilot, &c., to bring to at request of officer of customs, on penalty of 100*l*.

Power to superintendents of ports or officers of customs to inquire whether vessels entering any port be actually or infected, or liable to orders touching quarantine.

Masters of vessels refusing to answer interrogatories, &c., to forfeit 200*l*.

Vessels subject to quarantine arriving at any other port than that at which it ought to be performed, may be forced to repair to the appointed place.

Appendix.

Masters of vessels that have touched at infected places, &c., omitting to disclose the same, or omitting to hoist the prescribed signal, to forfeit 300*l*.

Commanders to deliver up bills of health, manifests, and log-book to the superintendent of quarantine, on penalty of 100*l*.

Penalty on masters, &c., quitting vessels liable to quarantine or permitting persons to quit them or not conveying the same or the cargo to the appointed places, 400*l*.

Penalty on persons coming in or going on board such vessels, and quitting them before they are discharged from quarantine may be forced to return and shall be liable to imprisonment for six months, and forfeit 300*l*.

Persons under or liable to quarantine, or persons having intercourse with them, shall be subject to the orders of the superintendent of quarantine, or the principal officer of customs, and may be compelled to obey their orders.

infectious disease or distemper as aforesaid, or shall have any person on board actually infected with the plague or other such infectious disease or distemper as aforesaid, and the commander, master, or other person having charge of such vessel, knowing that the place from whence he came, or at which he had touched as aforesaid, was infected with the plague or such other infectious disease or distemper, or knowing some person on board to be actually infected with the plague or such other infectious disease or distemper as aforesaid, so refuse or admit to disclose the same upon such examination as aforesaid, or shall wilfully omit to hoist the signal hereinbefore directed, to denote that his vessel is liable to the performance of quarantine, at the times and on the occasions herein directed with respect to the same, such commander, master, or other person, having charge of such vessel shall forfeit the sum of three hundred pounds.^(a)

XVI. Every commander, master, or other person having charge of any vessel which shall be ordered to perform quarantine as aforesaid, shall forthwith, after his arrival at the place appointed for the performance of quarantine, deliver on demand to the superintendent of quarantine or his assistant, or other officer of the customs, authorised to act in that behalf, and which superintendent, assistant, or other officer as aforesaid is hereby required to make such demand, his bill of health and manifest, together with his log-book and journal, under pain of forfeiting the sum of one hundred pounds if he shall wilfully refuse or neglect so to do.^(a)

XVII. If any commander, master, or other person having charge of any vessel liable to perform quarantine, and on board of which the plague or other infectious disease or distemper shall not then have appeared, shall himself quit, or shall knowingly permit or suffer any seaman or passenger coming in such vessel to quit such vessel by going on shore, or by going on board any other vessel or boat, before such quarantine shall be fully performed, unless by such license as shall be granted by virtue of any order in council to be made concerning quarantine as aforesaid, or in case any commander or other person having charge of such vessel shall not, within a convenient time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed into the place or places appointed for such vessel and lading to perform quarantine; then and in every such case every such commander, master, or other person as aforesaid, for every such offence shall forfeit and pay the sum of four hundred pounds;^(a) and if any such person coming in any such vessel liable to quarantine (or any pilot or other person going on board the same,^(b) either before or after the arrival of such vessel at any port or place in the United Kingdom, or the islands aforesaid), shall, either before or after such arrival, quit such vessel, unless by such license as aforesaid, by going on shore in any port or place in the United Kingdom, or the islands aforesaid, or by going on board any other vessel or boat, with intent to go on shore as aforesaid, before such vessel so liable to quarantine as aforesaid shall be regularly discharged from the performance thereof, it shall and may be lawful for any person whatsoever, by any kind of necessary force, to compel such pilot or other person so quitting such vessel so liable to quarantine to return on board the same; and every such pilot or other person so quitting such vessel so liable to quarantine shall for every such offence suffer imprisonment for the space of six months, and shall forfeit and pay the sum of three hundred pounds.^(a)

XVIII. And whereas disobedience or refractory behaviour in persons under quarantine or liable to the performance of quarantine, or in other persons who may have had any intercourse or communication with them, may be attended with very great danger to His Majesty's subjects: Be it further enacted, that all persons liable to perform quarantine, and all persons having had any intercourse or communication with them, whether in vessels or in a lazaret or elsewhere, shall be subject, during the said quarantine, or during the time they shall be liable to quarantine, to such orders as they shall receive from the superintendent of quarantine, or his assistant, or from the principal officer of the customs at any port or place where there is no such superintendent or assistant, or from any other officer of the customs authorised to act in that behalf, and the said officers are hereby empowered and required to enforce all necessary obedience to the said orders, and in case of necessity to call in

^(a) See note ^(d), p. 785.

^(b) See note ^(g), p. 783, as to medical officers of health.

others to their assistance, and all persons so called in are hereby required to assist accordingly; and such officers shall and they are hereby empowered and required to compel all persons liable to perform quarantine as aforesaid, and persons having had any intercourse or communication with them, to repair to such lazaret, vessel, or place, and to cause all goods, wares, and merchandise, and other articles comprised within any such orders to be made as last aforesaid, to be conveyed to such lazaret, vessel, or place duly appointed in that behalf, in such manner and according to such directions as shall be made by order of His Majesty in council as aforesaid, or of the lords or others of the Privy Council, or of any two or more of them; and if any person or persons liable to perform quarantine as aforesaid, or any person or persons having had any intercourse or communication with him, her, or them, shall wilfully refuse or neglect to repair forthwith, when required and directed so to do by such officers as aforesaid, to the said lazaret, vessel, or place duly appointed in that behalf, or having been placed in the said lazaret, vessel, or place, shall escape or attempt to escape out of the same before quarantine duly performed, it shall and may be lawful to and for the said quarantine officers, and also the watchmen and other persons appointed to see quarantine performed, and each of them, and they are hereby respectively required, by such necessary force as the case shall require, to compel every such person so refusing or neglecting as aforesaid, and every such person so escaping or attempting to escape as aforesaid, to repair or return to such lazaret, vessel, or place so appointed as aforesaid; and every person so refusing or neglecting to repair forthwith as aforesaid to the said lazaret, vessel, or place, and also every person actually escaping as aforesaid, shall forfeit the penalty of two hundred pounds.(a)

Appendix.

Persons refusing to repair to the lazaret or vessels for forfeit 200l.

XIX. It shall be lawful for any constable, headborough, tithingman, or other peace officer, or any other person, to seize and apprehend any person that shall, contrary to the provisions of this Act, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret, vessel, or place appointed in that behalf, for the purpose of carrying such person before any justice of the peace or magistrate; and it shall be lawful for any such justice of the peace or magistrate to grant his warrant for the apprehending and conveying of any such person to the vessel from which he or she shall have come on shore, or to any vessel performing quarantine, or lazaret, from which he or she shall have escaped, or for the confining of any such person in any such place of safe custody (not being a public gaol), and under such restrictions as to having any communication with any other persons, as may in the discretion of any justice of the peace or magistrate (calling to his aid, if he shall see fit, any medical person) appear to be proper, until such person can be safely and securely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Privy Council as to the disposal of any such person, and to make any further order, or grant any further warrant that may be necessary in that behalf.

Persons quitting vessels liable to perform quarantine, &c., may be arrested, and may by order of a justice be conveyed to the vessels, &c., or kept in custody till properly disposed of.

XX. And whereas it may be necessary for the public security to prevent all communication whatever with vessels performing quarantine: Be it therefore further enacted, that it shall and may be lawful to and for His Majesty, by his order or orders in council, notified by proclamation or published in the *London Gazette*, to prohibit all persons, vessels, and boats whatsoever, from going, under any pretence whatsoever, within the limits of any station which by any order or orders in council as aforesaid has been or may be assigned for the performance of quarantine; and if any person whatsoever, after such notification or publication of any such order or orders in council, shall presume, under any pretence whatsoever, to go with any vessel or boat within the limits of any such station, he or she shall for every such offence forfeit and pay the sum of two hundred pounds.(a)

Intercourse with stations allotted for quarantine of vessels may be prohibited by order in council.

XXI. If any officer of His Majesty's customs, or any other officer or person whatsoever, to whom it doth or shall appertain to execute any order or orders made or to be made concerning quarantine, or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall knowingly and wilfully embezzle any goods or articles performing quarantine, or be guilty of any other breach or neglect of his duty in respect of the vessels, persons, goods, or articles performing quarantine, every such officer or person so offending shall forfeit such office or employment as he may be possessed of, and shall become from thence incapable to hold or enjoy the

Penalty on persons embezzling goods performing quarantine, neglecting or deserting their duty, or permitting persons, vessels, &c., to depart without authority, or

Appendix.

giving false
certificates
or damaging
goods.

same, or to take a new grant thereof; and every such officer and person shall forfeit and pay the sum of two hundred pounds; (a) and if any such officer or person shall desert from his duty when employed as aforesaid, or shall knowingly and willingly permit any person, vessel, goods, or merchandise to depart or be conveyed out of the said lazaret, vessel, or other place as aforesaid, unless by permission under an order of His Majesty, by and with the advice of his privy council, or under an order of two or more of the lords or others of his privy council; or if any person hereby authorised and directed to give a certificate of a vessel having duly performed quarantine or airing, shall knowingly give a false certificate thereof, every such person so offending shall be guilty of felony; and if any such officer or person shall knowingly or wilfully damage any goods performing quarantine under his direction, he shall be liable to pay one hundred pounds damages and full costs of suit to the owner of the same.

Vessels from the
Mediterranean,
Turkey, or
Africa, having
undergone
examination
and been
released from
quarantine, to
be admitted to
entry upon pro-
ducing a certi-
ficate thereof.

XXII. If any vessel arriving from the *Mediterranean*, or from any port in *Turkey* or *Africa*, shall have undergone examination by the proper officer of quarantine, and upon a report of such examination being made to the lords or others of His Majesty's privy council, their lordships shall think proper to direct the release of such vessel from the performance of quarantine, it shall be lawful for such officer and he is hereby required to grant to the master or person having the charge or command of such vessel, a certificate in writing of such examination and release, and upon the production of such certificate to the collector or principal officer of His Majesty's customs, at any port in the United Kingdom, such vessel shall be admitted to entry without being liable to any further restraint.

After proof of
performance of
quarantine, and
proper certifi-
cate to that
effect, vessels or
persons shall
not be liable
to further
detention.

XXIII. After quarantine shall have been duly performed by any vessel, person or persons, obliged to perform quarantine as aforesaid, according to this Act, and to such order or orders made as aforesaid, and upon proof to be made by the oaths of the master or other person having charge of such vessel, and of three or more of the persons belonging thereto, or upon proof to be made by the oaths of two or more credible witnesses, before the collector or principal officer of the customs at the port where such quarantine shall be performed, or at the port nearest thereto, or before the superintendent of quarantine, or his assistant at the quarantine station, or before any justice of the peace living near to the port or place, or when such quarantine shall have been performed within any of the said isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, before any two jurats or magistrates of any of the said isles respectively, that such vessel, and all and every such person or persons respectively, have duly performed quarantine as aforesaid, and that the vessel and all and every person and persons are free from infection, and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said vessel, or person acting for him, then and in the said respective cases such collector or principal officer of the customs, or the superintendent of quarantine, or his assistant, or such justice of the peace, or such jurats or magistrates as aforesaid respectively, are hereby required to give a certificate thereof, and thereupon such vessel, and all and every such person or persons so having performed quarantine, shall be liable to no further restraint or detention upon the same account, for which such vessel, person, or persons shall have performed quarantine as aforesaid.

Goods liable to
perform quaran-
tine shall be
opened and
aired, as
directed
by order in
council, and
proof thereof
to be made;

XXIV. All goods, wares, and merchandise, and other articles liable to quarantine as aforesaid, shall be opened and aired in such place or places, and for such time and in such manner as shall be directed by His Majesty, by such order or orders to be made as aforesaid, and after such orders have been duly complied with, proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, wares, and merchandise and all other articles shall have been opened and aired, and of one of the guardians, or if there be no guardians, then one of the officers authorised by the commissioners of customs to act in the service of quarantine in such lazaret or vessel, or if there be no such officer, then by the oaths of two or more credible witnesses serving in the said lazaret or vessel, before the superintendent of quarantine or his assistant, in case such opening and airing shall be had at a port or place where such superintendent or assistant shall be established, or otherwise before the principal officer of the customs authorised to act in the service of quarantine at such port or place, which oath such superintendent, assistant, or principal officer is hereby authorised to administer; and such superintendent, assistant, or principal officer, as the case may be, shall grant a certificate of such proof having been made, and upon production of such certificate to the proper officer of the customs, such goods, wares, and

and a certificate
granted, &c.

merchandise, and other articles, shall be liable to no further restraint or detention, either at the port or place where such quarantine shall have been performed, or at any other place whereto they be afterwards conveyed.

Appendix.

XXV. If any person shall knowingly or wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed or required to be granted by any order of His Majesty in council, now in force or hereafter to be made touching quarantine, or shall publish any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged or counterfeited, interlined, erased, or altered, or shall knowingly and wilfully utter and publish any such certificate with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of felony.

Persons forging or uttering false certificates required by order in council, guilty of felony.

XXVI. If any person shall land or unship, or shall move in order to the landing or unshipping thereof, any goods, wares, or merchandize, packets, packages, baggage, wearing apparel, books, letters, or other articles from on board any vessel liable to perform quarantine as aforesaid, or shall knowingly receive the same after they had been so landed or unshipped, every such person shall forfeit and pay the sum of five hundred pounds; and if any person or persons shall clandestinely convey or secrete, or conceal for the purpose of conveying any letters, goods, wares, or merchandize or other articles as aforesaid, from any vessel actually performing quarantine, or from the lazaret or other place where such goods, wares, merchandize, or other articles as aforesaid shall be performing quarantine, every such person so offending as last aforesaid, shall forfeit the sum of one hundred pounds.(a)

Penalty on persons landing goods, &c., from vessels liable to perform quarantine, or receiving them, 500l.: or persons secreting them for conveyance from vessels performing quarantine, 100l.

XXVII. That in case it shall at any time happen that any part of the United Kingdom, or the islands of *Guernsey, Jersey, Alderney, Sark, or Man, or France, Spain, or Portugal*, or the *Low Countries*, shall be infected with the plague, or any other infectious disease or distemper as aforesaid, it shall and may be lawful to and for His Majesty, by his proclamation, to prohibit or restrain all vessels and boats under the burthen of one hundred tons from sailing or passing out of any port or place of the United Kingdom, or the Isles of *Guernsey, Jersey, Alderney, Sark, or Man*, or any of them, until security be first given by the master of every such vessel or boat respectively, to the satisfaction of the principal officers of the customs or the chief magistrate of the port or place from whence such vessels or boat shall sail, by bond taken by such officer or magistrate, to the king, with sufficient sureties in the penalty of two hundred pounds, with condition, that if such vessel or boat shall not go to or touch at any country, port, or place to be mentioned for that purpose in such proclamation, and if neither the master or other person having charge of such vessel or boat, nor any mariner or passenger in such vessel or boat, shall, during the time aforesaid, go on board any other vessel at sea, and such master or other person having charge of such vessel or boat shall not permit or suffer any person or persons to come on board such vessel or boat at sea from any other vessel, and shall not during the time aforesaid receive any goods or merchandize whatsoever out of any other vessel, then such bond shall be void; for the making of which bond no fee or reward whatsoever shall be taken; and in case any vessel or boat for which such security shall be required by such proclamation shall set sail or pass out of any port or place in the United Kingdom, or the islands of *Guernsey, Jersey, Alderney, Sark, or Man*, or any of them respectively, before security be given as aforesaid, every such vessel or boat so sailing or passing out of any port or place contrary to the true intent and meaning of this Act, together with her tackle, apparel, and furniture, shall be forfeited to His Majesty, and the master of and every mariner sailing in such vessel or boat shall severally forfeit and pay the sum of two hundred pounds.(a)

His Majesty in certain cases may by proclamation prohibit vessels under 100 tons from sailing from any port in the United Kingdom until bond be given by the master not to touch at any place mentioned in such proclamation.

Penalty for sailing without giving such security, forfeiture of vessel, &c.

XXVIII. The consuls and vice-consuls of His Majesty shall and are hereby empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside.

Power to consuls, &c., to administer oaths.

XXIX. In all cases wherein by virtue of this Act, or any other Act hereafter to be made touching quarantine, any examination or answer shall be taken or made

Persons authorised to take examinations

(a) See note (d), p. 785.

Appendix.

may administer oaths, and persons swearing falsely or procuring others so to do shall be deemed guilty of perjury.

upon oath, the person who shall be authorised and required to take such examinations and answers shall and may be deemed to have full power and authority to administer such oaths; and if any person who shall be interrogated or examined shall wilfully swear falsely to any matter concerning which such person shall depose or make oath on such examination, or in such answer, or if any person shall procure any other person so to do, he or she so swearing falsely, or procuring any other person so to do, shall be deemed to have been guilty of and shall be liable to be prosecuted for perjury or subornation of perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law in such cases respectively made and provided.

Superintendents at ports to be appointed by commissioners of customs. Principal officer of the customs may act in absence, &c., of superintendent.

Publication in the *London Gazette* of orders of council, &c., sufficient notice.

Recovery and application of penalties.

In whose name actions for penalties in England, Ireland, or Scotland must be prosecuted.

In prosecutions by officers of the customs the Attorney-General in England or Ireland, or

XXX. All superintendents of quarantine at the several ports, and their assistants, shall and may be appointed by any instrument signed by the commissioners of customs for the time being; and everything required to be done and performed by the superintendent of quarantine, or his assistant, may, in case of the absence or sickness of such superintendent or assistant, be done and performed by such principal officer of the customs as shall be authorised to act in that behalf.

XXXI. The publication in the *London Gazette* of any order in council, or of any order by any two or more of the lords or others of His Majesty's Privy Council, made in pursuance of this Act, or His Majesty's royal proclamation made in pursuance of the same, shall be deemed and taken to be sufficient notice to all persons concerned of all matters therein respectively contained.

XXXII. All forfeitures and penalties that shall be incurred by reason of any offence committed against this Act shall and may be recovered by suit in any of His Majesty's courts of record in *England* or *Ireland* or in *Scotland* by summary action in the court of sessions, or by prosecution before the court of judicature there or by suit in any of His Majesty's courts in the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*; and every such forfeiture and penalty shall belong and be given, two-thirds to the person who shall inform and sue for the same, and the remainder to His Majesty.^(a)

XXXIII. Provided always that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause, or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, information, or prosecution, or actions, bills, plaints, informations, or prosecutions, in any of His Majesty's courts in *England*, *Ireland* or *Scotland*, or any proceeding or proceedings before any justice of the peace of any county, riding, division, city, town, stewartry, or place for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty in council, or by two or more of the lords or others of His Majesty's Privy Council as aforesaid, unless the same be commenced, prosecuted, entered, or filed in the names of His Majesty's Attorney-General in *England* or *Ireland*, or Advocate in *Scotland* respectively, or under the direction of the commissioners of the customs, and in the name or names of some officer or officers of the customs in *England*, *Ireland*, or *Scotland* respectively; and if any action, bill, plaint, information, or prosecution, actions, bills, plaints, informations, or prosecutions, or any proceeding or proceedings before any justice as aforesaid, shall be commenced, prosecuted, entered, and filed in the name or names of any other person or persons than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

XXXIV. Provided also, that in case any prosecution, suit, complaint, or other proceeding as aforesaid, shall be commenced or depending by any officer or officers of the customs, for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty in council, or by any two or more of the

(a) These penalties may now be recovered before justices; see 39 & 40 Vict. c. 36, s. 234, quoted in note (f), *ante*, p. 785. The remedy by action, however, still remains; and the power of remission given to the Crown by 22 Vict. c. 32, does not apply to such penalties. See *Todd v. Robinson*, *ante*, p. 267. As to the power to stay proceedings, see section 34, *supra*. As to the time within which an action for penalties must be brought see *Dyer v. Best*, L. R. 1 Ex. 152; 35 L. J. Ex. 105; 13 L. T. (N.S.) 753; 14 W. R. 336; 12 Jur. (N.S.) 142; 4 H. & C. 189; 30 J. P. 151.

lords or others of His Majesty's Privy Council as aforesaid, it shall and may be lawful for His Majesty's Attorney General in *England or Ireland*, or Advocate in *Scotland*, respectively, to stop all further proceedings therein, as well with respect to the share of such fine, penalty, or forfeiture, fines, penalties, or forfeitures, to which any such officer or officers shall or may claim to be entitled, as to the share thereof belonging to His Majesty, if upon consideration of the circumstances under which any such fine, penalty, or forfeiture, fines, penalties, or forfeitures, may be incurred, it shall appear to them respectively to be fit and proper so to do.

Appendix.

Advocate in Scotland may stop proceedings.

XXXV. All offences committed against any of the provisions of this Act, for which no specific penalty, forfeiture, or punishment is provided by this Act, shall and may be tried, heard, and determined before any three justices of the peace of the county, riding, division, city, or place where such offence or disobedience shall happen; and if any person shall be convicted of any such offence or disobedience, he or she shall be liable to such forfeiture and penalty not exceeding the sum of five hundred pounds for any offence, or to such imprisonment, not exceeding twelve months for any one offence, as shall in the discretion of the three justices who shall have heard and determined the same be judged proper; and such forfeiture and penalty shall be paid, two-thirds to the person suing for the same, and the remainder to His Majesty, to be applied as the proceeds of other forfeitures and penalties are hereinbefore directed to be applied.(b)

Offences for which no specific penalty is provided, may be determined before three justices, who may fine or imprison.

Application of penalties.

XXXVI. In any prosecution, suit, or other proceedings against any person or persons whatsoever, for any offence against this Act, or any Act which may hereafter be passed concerning quarantine, or for any breach or disobedience of any order or orders which shall be made by His Majesty, with the advice of His Privy Council, concerning quarantine and the prevention of infection, and notified or published as aforesaid, or of any order or orders made by two or more of the lords or others of the privy council aforesaid, the answer or answers of the commander, master, or other person having charge of any vessel, to any question or interrogatories put to him by virtue and in pursuance of this Act, or of any Act which may hereafter be passed concerning quarantine, or of any such order or orders as aforesaid, may and shall be given and received as evidence, so far as the same relates or relate to the place from which such vessel shall come, or to the place or places at which such vessel touched in the course of the voyage, and where any vessel shall have been directed to perform quarantine by the superintendent of quarantine or his assistant, or where there is no such superintendent or assistant, by the principal officer of the customs at any port or place, or other officer of the customs authorised to act in that behalf, they having been so directed to perform quarantine, may and shall be given and received as evidence that such vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant in any such prosecution, suit, or other proceeding to show that the vessel did not come from or touch at any such place or places as is or are stated in the said answer or answers, or that such vessel although directed to perform quarantine, was not liable to the performance thereof; and where any such vessel shall have in fact been put under quarantine at any port or place by the superintendent of quarantine or his assistant, or other officer of the customs authorised as aforesaid to act in that behalf, and shall actually be performing the same, such vessel shall in any prosecution, suit, or other proceeding against any person or persons whatever, for any offence against this Act or any other Act which may hereafter be passed concerning quarantine and the prevention of infection, or any order or orders which shall be made by His Majesty in Council, or any two or more of the lords or others of his privy council as aforesaid, be deemed and taken to be liable to quarantine, without proving in what manner or from what circumstances such vessel became liable to the performance thereof.

In prosecutions, &c., answers of persons having the charge of vessels shall be received as evidence so far as relates to the places from which vessels came, or at which they touched, and the having been directed to perform quarantine shall be received as evidence that vessels were liable unless in either case proof be made to the contrary, and a vessel being put under quarantine shall be proof of such vessel being liable to perform it.

XXXVII. [*Repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61, ante, p. 692.)*]

General issue. Limitation of actions.

(b) See the qualifications of these provisions in 39 & 40 Vict. c. 36, s. 234, cited in note (e), ante, p. 785.

Appendix.

THE GAME ACT, 1831.

(1 & 2 WILL. 4, c. 32.)(a)

An Act to amend the Laws in England(b) relative to Game.

[5th October, 1831.]

* * * * *

Definition of
game under this
Act.

II. The word "game" shall, for all the purposes of this Act, be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards.

* * * * *

Justices to hold
a special
session yearly
for granting
licenses to
persons to deal
in game.

XVIII. The justices of the peace of every county, riding, division, liberty, franchise, city, or town(c) shall hold a special session in the division or district for which they usually act, and in every year in the month of July,(d) for the purpose of granting licenses to deal in game, of the holding of which session seven days' notice shall be given to each of the justices acting for such division or district; and the majority of the justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorised (if they shall think fit) to grant under their hands to any person being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper, or victualler, or licensed to sell beer by retail,(e) nor being the owner, guard, or driver of any mail coach or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a license according to the form in the Schedule (A.) annexed to this Act, empowering the person to whom such license shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep, a board having thereon in clear and legible characters his Christian name and surname, together with the following words (that

(a) See the Local Government Act, 1894, ss. 27, 32, *ante*, pp. 728, 730. The preamble to this Act was repealed by the Statute Law Revision (No. 2) Act, 1888 (51 & 52 Vict. c. 57). The short title is authorised by the Short Titles Act, 1892 (55 & 56 Vict. c. 10).

(b) All the clauses and provisions of this Act and of 2 & 3 Vict. c. 35, relating to the granting of licenses by justices to deal in game and to the holding of special sessions for the purpose of granting such licenses, and also all the clauses, provisions, and penalties contained in the said Acts, or either of them, relating to dealers in game and to the selling of game either by or to such dealers or others, are extended to the whole of the United Kingdom by the Game Licenses Act, 1860 (23 & 24 Vict. c. 90, s. 13).

(c) The powers, duties, and liabilities of justices under this section are now transferred to district and county borough councils by sections 27 and 32 of the Local Government Act, 1894, *ante*, pp. 728, 730.

(d) By 2 & 3 Vict. c. 35, s. 4, after reciting this enactment, and that it is expedient that justices should be empowered to hold a special session for the purpose of granting these licenses not only in July but also at any subsequent period of the year, it is enacted that from and after the passing of this Act it shall be lawful for the said justices of the peace to hold in their respective divisions or districts a special session for the purpose of granting licenses to deal in game, not only in the month of July, but also at any time and from time to time as often as they shall think fit after the said month of July in every year; and it shall also be lawful for the majority of the said justices (not being less than two) assembled at any such session or at any adjournment thereof, to grant licenses to deal in game, in the manner directed by the said last-recited Act, and under and subject to the provisions and regulations thereof: Provided always, that of the holding of any such special session seven days' notice shall be given to each of the justices acting for the division or district in which such session is intended to be held: Provided also, that every license to deal in game, at whatever time the same hath been or shall be granted, shall continue in force from the granting thereof until the first day of July then next following, and no longer, anything in the said last-recited Act or in such license to the contrary notwithstanding.

Although the whole of the above Act 2 & 3 Vict. c. 35, was repealed by the Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 39, it is considered that the foregoing section remains in force by virtue of section 13 of the Game Licenses Act, 1860 (23 & 24 Vict. c. 90), cited above.

(e) Including the holder of an additional license to sell beer under section 1 of the Revenue Act, 1863 (26 & 27 Vict. c. 33). *Shoolbred v. St. Pancras JJ.*, 24 Q. B. D. 346; 59 L. J. M. C. 63; 62 L. T. (N.S.) 287; 38 W. R. 399; 54 J. P. 231.

is to say), "Licensed to deal in game;" and every such license granted in any succeeding year shall continue in force for the period of one year next after the granting thereof. **Appendix.**

* * * * *

XXI. Provided always, that persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged by virtue of this Act to take out more than one license in any one year to authorise them to deal in game at such house, shop, or stall. Proviso as to licenses in case of partnership.

XXII. If any person licensed by virtue of this Act to deal in game shall during the period of such license be convicted of any offence whatever against this Act, such license shall thereupon become null and void. Licenses to become void on any conviction under this Act.

* * * * *

XXVII. If any person, not being licensed to deal in game according to this Act, shall buy any game from any person whatsoever, except from a person licensed to deal in game according to this Act, or *bond fide* from a person affixing to the outside of the front of his house, shop, or stall a board purporting to be the board of a person licensed to deal in game, every such offender shall, on conviction thereof before two justices of the peace, forfeit and pay for every head of game so bought such sum of money not exceeding five pounds, as to the said justices may seem meet, together with the costs of the conviction. Penalty on unlicensed persons buying game except from licensed dealer.

XXVIII. If any person, being licensed to deal in game according to this Act, shall buy or obtain any game from any person not authorised to sell game for want of a game certificate, or for want of a license to deal in game; or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop, or stall without such board as aforesaid being affixed to some part of the outside of the front of such house, shop, or stall at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game at any place other than his house, shop, or stall where such board shall have been affixed; or if any person, not being licensed to deal in game according to this Act, shall assume or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game; every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction. Penalty on licensed dealers buying game from persons not authorized to sell, or otherwise offending; and on unlicensed persons feigning to be licensed.

XXIX. Provided always, that the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in every case where the same would have been lawful if transacted by such licensed dealer himself: Provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game. Servants of licensed dealer may buy and sell game. One licensed dealer in game may sell on account of another.

* * * * *

XLVII. [See now the *Public Authorities Protection Act*, 1893, ante, p. 692.]

Limitation of actions, &c.

SCHEDULE (A.).

FORM OF LICENCE.

At a special session of the justices of the peace of the county of _____ [or riding, &c., as the case may be], acting for the division of [or otherwise, as the case may be], in the said county, holden at _____, in the said _____, on the _____ day of _____, in the year _____,

We, being _____ justices acting for the said _____, assembled at the said special session, do hereby authorise and empower *A. B.*, of _____ [here insert the name, description, and place of residence, and if more than one in partnership, say *C. D.*, of, &c., and *E. F.*, of, &c., being partners], being a householder [or householders] [or keeper (or keepers) of a shop or stall, as the case may be], to buy game from any person authorised to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game;" and we do also

Appendix.

authorise and empower the said *A. B.* [or *C. D.* and *E. F.*, being partners] to sell at his [or their] house [shop or stall] any game so bought, provided that the said *A. B.* [or *C. D.* and *E. F.*, being partners] shall affix to some part of the outside of the front of his [or their] house [shop or stall], and shall there keep, a board having thereon in clear and legible characters, his Christian name and surname [or their Christian names and surnames], together with the following words, "Licensed to deal in game."

This license will expire on

(Signed)

, Justice of the Peace.

, Justice of the Peace.

THE KNACKERS ACT, 1844.

(7 & 8 VICT. CAP. 87.)*(a)*

An Act to amend the Law for regulating Places kept for slaughtering Horses.

[9th August, 1844.]

Licenses to keep slaughter-houses granted under 26 Geo. 3, c. 71, to be annual.

WHEREAS by an Act passed in the twenty-sixth year of the reign of His Majesty King *George* the Third, and also by an Act passed in the sixth year of the reign of His late Majesty King *William* the Fourth,^(b) provision was made for the regulation and inspection of houses and places kept for the purpose of slaughtering horses: And whereas it is expedient to make further provision for the better and more effectual regulation and inspection of such houses and places: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, that every license which shall after the passing of this Act be granted under or by virtue of the said Act of the twenty-sixth year of King *George* the Third, authorizing any person to keep or use any house or place for the purpose of slaughtering or killing any horse or other cattle (not killed for butchers' meat), shall be granted, and shall continue in force, for a period not exceeding one year from the date at which the same was granted, determinable as hereinafter provided: Provided nevertheless, that in the case of the renewal of any such license to any person to whom any such license may have been previously granted as aforesaid, it shall not be necessary for such person to obtain or produce to the justices at such general quarter sessions of the peace^(c) a certificate under the hands and seals of the minister, churchwardens, overseers, or householders, as required by the said last-mentioned Act.

Justices in quarter sessions may cancel licenses.

II. . . . It shall be lawful for the justices assembled at any general quarter sessions of the peace to be holden for any county,^(c) upon application and complaint made to them in writing by any person, and upon due proof being made to them that the party so complaining had given fourteen days previous notice in writing thereof to the clerk of the peace for such county, and also to the party complained against, and upon due proof to their satisfaction that any person so licensed as aforesaid has been guilty of any breach or violation of the said two several hereinbefore recited Acts or either of them, or of this Act, or any part or parts thereof respectively, to cancel and wholly put an end to any and every license which may have been granted to the person or persons so complained against, and from thenceforth the same shall be of no force or effect.

* * * * *

Meaning of certain words used in this Act.

X. . . . The words hereinafter mentioned, which in their usual signification have a more restricted or different meaning, shall in this Act (except where the nature of the provisions or the context of the Act shall exclude such construction) be interpreted as follows; (that is to say,) the word "county" shall include city, town, borough, cinque port, riding, liberty, or division; the word "horse" shall include mare, gelding, mule, pony, colt, or filly; the word "cattle" shall include

^(a) See 26 Geo. 3, c. 71, *ante*, p. 781. This Act has no statutory short title. It is repealed as to London by section 142 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

^(b) 5 & 6 Will. 4, c. 59, repealed by the Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 1. See section 7 of that Act cited in note ^(a), *ante*, p. 782.

^(c) Now the district or county borough council, see sections 27 (2) and 32 of the Local Government Act, 1894, *ante*, pp. 728, 730.

bull, ox, cow, steer, heifer, calf, ass, sheep, lamb, goat, pig, or any other domestic animal; and every word importing the singular number only shall extend and be applied to several persons and things as well as to one person or thing; and every word importing the masculine gender only shall extend to a female as well as a male.

Appendix.

THE POOR LAW AMENDMENT ACT, 1844.

(7 & 8 VICT. CAP. 101.)*(d)*

An Act for the further Amendment of the Laws relating to the Poor in England.

[9th August, 1844.]

* * * * *

XXXII.*(e)* The said commissioners shall have all the powers with regard to *[the salaries of the said auditors to be charged on the poor rates, and to]* all other matters relating to auditors for such districts, as they have under the said first recited Act with regard to paid officers; and every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods, or chattels, found by him to be due from any person; and when any such auditor has so certified any money, books, deeds, papers, goods, or chattels, to be due from any person, he shall forthwith report the same to the said commissioners; and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods, and chattels, and in the case where there is no treasurer as aforesaid all moneys so certified to be due, shall be delivered over or paid, within seven days of the same being certified, to the person or persons authorised to receive the same; and if any such money, books, deeds, papers, goods, or chattels, be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all moneys so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorising the illegal payment, or otherwise answerable for such moneys, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorised to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first recited Act;*(f)* and the

Recovery of money due, books, &c., from accounting parties.

(d) The few sections of this Act which are set out here relate to the audit of accounts, and are incorporated by the Public Health Act, 1875, ss. 247, 248, *ante*, p. 326. See also on the same subject 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113; 42 Vict. c. 6, *post*. The marginal notes are according to the second edition of the Statutes Revised, vol. 7, p. 335.

(e) The first sentence of this section as it originally stood in the Act was repealed by 42 Vict. c. 6. The next part, which referred to the election of auditors, was repealed by 31 & 32 Vict. c. 122, s. 24, *post*. The subsequent passage, being the first part of the section as above set out, was repealed by the Statute Law Revision Act, 1874 (No. 2) (37 & 38 Vict. c. 96), in so far as it relates to the power of the Commissioners with regard to the salaries of auditors.

(f) 4 & 5 Will. 4, c. 76, s. 99. That Act enables penalties and forfeitures to be levied upon conviction by distress and sale of the offender's goods, and in default of distress by commitment to prison for a term not exceeding three months. But a balance certified by the auditor is a debt only, and is barred by the bankruptcy of the debtor. *Reg. v. Master*, *ante*, p. 330. The sum certified is still to be recovered as a poor rate: 47 & 48 Vict. c. 43,

Appendix.

expenses attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged to their accounts in such manner and in such proportions as the said commissioners may direct ; and if any person from whom any such books, deeds, papers, goods, or chattels may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorised to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorised to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things, in their hands. . . . (a).

Declaration as to accounts.

XXXIII. . . . And it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts ; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the first recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury. (b)

* * * * *

Auditor's allowances, disallowances, or surcharges may be removed into Court of Queen's Bench by *certiorari*.

XXXV. . . . If any person aggrieved by any allowance, disallowance, or surcharge by any such auditor require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made ; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorised to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition of such recognizance shall be to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary ; and on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement, and no other ; and if it appear to

s. 11. The justices act ministerially in enforcing the auditor's decision, and cannot inquire into the legality thereof. *Reg. v. Linford*, 7 E. & B. 950 ; 21 J. P. 435 ; *Reg. v. Finnis*, 1 E. & E. 935 ; 28 L. J. M. C. 201 ; 5 Jur. (N.S.) 971. But the court will not compel justices to issue their warrant if there is an appeal pending against the disallowance. *Reg. v. Denbighshire JJ.*, 33 L. T. (O.S.) 145. See also as to the discretion of the court in compelling justices to enforce an auditor's certificate, *Reg. v. Brecknockshire JJ.*, 7 E. & B. 951 ; 21 J. P. 356.

(a) The concluding part of this section is inapplicable for the purposes of this work, and is, therefore, omitted. For the like reason the first part of section 33 is also omitted here.

(b) Section 34 applies only to poor law officers.

such court that the decision of the said auditor was erroneous^(c) they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged, to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit by the rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such court may seem fit; which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

Appendix.

XXXVI. Provided always, that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the Court of Queen's Bench for a writ of *certiorari*, to apply to the said commissioners^(d) to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question.

Or persons aggrieved may apply to commissioners who may issue orders for determining questions.

THE COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. CAP. 16).^(e)

An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public nature. [8th May, 1845.]

I. This Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

Act to apply to all companies incorporated by Acts hereafter to be passed.

II. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows: ^(f)

Interpretation:

The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the under-

"the special Act:"

"prescribed:"

"the undertaking:"

^(c) The court can review the decision of the auditor not only when it is erroneous in point of law, but erroneous in any sense. Per CAVE, J., in *Reg. v. Hazlehurst*, 51 J. P. 645. The auditor's decision upon a joint account, such as that of overseers under this Act, may be reversed and the disallowance on surcharge remitted in favour of some or one only of the accounting parties. See 39 & 40 Vict. c. 61, s. 38.

^(d) The appeal was, by 21 & 22 Vict. c. 98, s. 60, transferred to the Secretary of State, for whom the Local Government Board were substituted by 34 & 35 Vict. c. 70, *post*, and this provision is retained in the Public Health Act, 1875, s. 247, *ante*, p. 326.

^(e) Certain of the sections of this Act are incorporated by some of the Acts included in this Appendix; for example, by the Baths and Washhouses Act, 1847 (9 & 10 Vict. c. 74), s. 23. Only the sections so incorporated are here set out, but sections 1, 2, and 3 are also included in the present work, as these are necessary to be referred to in construing the incorporated sections. The marginal notes are printed as in the second edition of the Statutes Revised, vol. 7, p. 435. The preamble and part of section 1 were repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

^(f) These clauses must be read in connection with the sections of the several Acts by which this Act is incorporated, as the interpretations here given are in some instances qualified.

Appendix. taking" shall mean the undertaking or works, of whatever nature which shall by the special Act be authorised to be executed.

Interpretations in this and the special Act :	III. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction ; (that is to say,) (a)
Number :	Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :
Gender :	Words importing the masculine gender only shall include females :
"Lands :	The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure :
"Lease :	The word "lease" shall include an agreement for a lease :
"Month :	The word "month" shall mean calendar month :
"Superior courts :	The expression "superior courts" shall mean Her Majesty's superior courts of record at <i>Westminster</i> : (b)
"Oath :	The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath.
"County :	The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :
"Justice :	The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where any matter shall be authorised or required to be done by two justices the expression "two justices" shall be understood to mean two justices assembled and acting together in petty sessions :
"Two justices :	The expression "the company" shall mean the company constituted by the special Act :
"The company :	The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name:
"Directors :	The word "shareholder" shall mean shareholder, proprietor, or member of the company ; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation : and
"Shareholder :	The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."
"Secretary :	

* * * * *

Power to borrow money. And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows :—(c)

Power to borrow money. XXXVIII. If the company be authorised by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorised to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to re-borrow. XXXIX. If, after having borrowed any part of the money so authorised to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time ; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond.

Evidence of authority for borrowing. XL. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed

(a) These clauses must be read in connection with the sections of the several Acts by which this Act is incorporated, as the interpretations here given are in some instances qualified.

(b) Words relating to Ireland only are here omitted.

(c) Sections 38 to 55 inclusive are incorporated by the Baths and Washhouses Act, 1847 (9 & 10 Vict. c. 74), s. 23, *post*.

or paid up, or where by this or the special Act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and the copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Appendix.

XLI. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage, deed, or bond may be according to the form in the Schedule (C.) or (D.) to this Act annexed, or to the like effect.

Mortgages and bonds to be stamped.

XLII. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another, by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorised.

Rights of mortgagees.

XLIII. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

Application of calls notwithstanding mortgages.

XLIV. The respective obligees in such bonds shall, proportionally according to the amount of the money secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorised, or otherwise howsoever.

Rights of obligees.

XLV. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

Register of mortgages and bonds.

XLVI. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this Act annexed, or to the like effect.

Transfers of mortgages and bonds to be stamped.

XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects: and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Transfers of mortgages and bonds to be registered.

XLVIII. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period

Payment of interest on

Appendix. be appointed, half-yearly to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

moneys borrowed.
Transfers of interest to be stamped.
Repayment of money borrowed at a time fixed.

XLIX. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond ; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond ; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of money borrowed where no time fixed.

LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose ; and in the like case the company may at any time pay off the money borrowed, on giving the like notice ; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London or Dublin Gazette*, according as the principal office of the company shall be in *England or Ireland*, and in some newspaper as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond.

LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of interest, when to be enforced by appointment of a receiver.

LIII. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided ; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for the principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of principal and interest.

Appointment of receiver.

LIV. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid ; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed ; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver

shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease. **Appendix.**

LV. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward. Access to account books by mortgagees.

* * * * *

And with respect to the accountability of the officers of the company, be it enacted as follows :—(a) Accountability of officers.

CIX. Before any person entrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office. Security to be taken from officers entrusted with money.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such moneys shall have been disposed of; and together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts. Officers to account, on demand.

CXI. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof, when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to jail, there to remain without bail for a period not exceeding three months, unless the same be sooner paid. Summary remedy against parties failing to account.

CXII. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to jail, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company. Officers refusing to deliver up documents, &c., to be imprisoned.

CXIII. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without Where officer about to abscond a warrant may be issued in the first instance.

(a) Sections 109—114 inclusive are incorporated by the Baths and Wash-houses Act, 1847 (9 & 10 Vict. c. 74), s. 23, *post*.

Appendix.

bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

Sureties not to be discharged.

CXIV. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

* * * * *

Bye-laws.

And with respect to the making of bye-laws, be it enacted as follows :—(a)

Power to make bye-laws for the officers of the company.

CXXIV. It shall be lawful for the company, from time to time, to make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company, in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.

Fines for breach of such bye-laws.

CXXV. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

Bye-laws to be so framed as that penalties may be mitigated.

CXXVI. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such justice shall think fit.

Evidence of bye-laws.

CXXVII. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws in all cases of prosecution under the same.

* * * * *

Recovery of damages and penalties.

And with respect to the recovery of damages, not specially provided for, and penalties, be it enacted as follows :—(b)

Provision for damages not otherwise provided for.

CXLII. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount, or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

Distress against the treasurer.

CXLIII. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods

(a) Sections 124—127 inclusive are incorporated by the Baths and Wash-houses Act, 1847 (9 & 10 Vict. c. 74), s. 23, *post*, subject, however, to the provisions of section 34 of that Act.

(b) Sections 142—160 inclusive are incorporated by the Baths and Wash-houses Act, 1847 (9 & 10 Vict. c. 74), s. 23, *post*. They are almost identical with sections 136—149 of the Lands Clauses Act, 1845, *post*. This part of the Act is printed as it remains unrepealed. The sections and parts of sections repealed were repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), of which section 5 provides for the substitution of the procedure under the Summary Jurisdiction Acts, 1848 and 1879. Many of the repealed sections and parts of sections were also again repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

of the treasurer of the company : and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly ; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence ; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Appendix.

Notice to
treasurer.

Reimbursement
of treasurer.

Method of
proceeding
before justices
in questions of
damages, &c.

CXLIV. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons ; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath ; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of
penalties.

CXLV. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference ; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed ; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for
defacing boards
used for such
publication.

CXLVI. If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be
summarily
recovered before
two justices.

CXLVII. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

CXLVIII. [*Penalties may be levied by distress. Repealed by Summary Jurisdiction Act, 1884.*]

CXLIX. [*Imprisonment in default of distress. Repealed as above.*]

CL. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.(c)

Distress, how to
be levied.

CLII. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such

Distress not
unlawful
for want of
form, &c.

(c) See the Summary Jurisdiction Act, 1879, s. 43, and as to demand before proceeding to recover overplus, *Simpson v. Routh*, 2 B. & C. 682 ; *Philp v. Donati*, 2 Taunt. 62.

Appendix.

Application of penalties. †

party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in any action upon the case.

Damage to be made good in addition to penalty.

CLII. The justices by whom any such penalty or forfeiture may be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.(a)

CLIII. (*Penalties to be sued for within six months. Repealed by the Summary Jurisdiction Act, 1884. See now the Summary Jurisdiction Act, 1848, s. 11.*)

Penalty on witnesses making default.

CLIV. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damage shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted, and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Transient offenders.

CLV. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.(b)

Proceedings not to be quashed for want of form, &c.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed, with all convenient despatch, to the hearing and determining of the complaint against such offender.

CLVII. [*Form of Conviction. Repealed by Summary Jurisdiction Act, 1884.*]

Parties allowed to appeal to quarter sessions on giving security.

CLVIII. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Court to make such order as they think reasonable.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions.(c)

CLX. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may

(a) The remainder of this section is repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66). As to the appropriation of these penalties in boroughs having a separate court of quarter sessions, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 221.

(b) This section is repealed as to England and Wales so far as relates to any matter to which the Summary Jurisdiction Acts apply (47 & 48 Vict. c. 43, s. 4).

(c) See Summary Jurisdiction Acts, 1879, s. 31, and 1884, s. 6.

confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

* * * * *

SCHEDULES referred to by the foregoing Act.

SCHEDULE (C.).(d)

Form of Mortgage Deed.

“The Company.”

Mortgage, Number . £

By virtue of [*here name the special Act*] we, “The Company,” in consideration of the sum of pounds, paid to us by A. B., of , do assign unto the said A. B., his executors, administrators, and assigns, the said undertaking [and (*in case such loan shall be in anticipation of the capital authorised to be raised*) all future calls on shareholders], and all the tolls and sums of money arising by virtue of the said Act, and all the estate, right, title, and interest of the company in the same, to hold unto the said A. B., his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (*in case any period be agreed upon for that purpose*)], [at or any place of payment other than the principal office of the company].

Given under our common seal this day of , in the year of our Lord .

SCHEDULE (D.).(d)

Form of Bond.

“The Company.”

Bond, Number . £

By virtue of [*here name the special Act*], we, “The Company,” in consideration of the sum of pounds to us in hand paid by A. B., of , do bind ourself and our successors unto the said A. B., his executors, administrators, and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that if the said company shall pay to the said A. B., his executors, administrators, and assigns [at] *in case any other place of payment than the principal office of the company be intended* on the day of , which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly on the day of and day of , then the above-written obligation is to become void, otherwise to remain in full force.

Given under our common seal, this day of one thousand eight hundred and .

SCHEDULE (E.).(e)

Form of Transfer of Mortgage or Bond.

I, A. B., of , in consideration of the sum of paid to me by G. H., of , do hereby transfer to the said G. H., his executors, administrators, and assigns, a certain bond [or mortgage] number made by “The Company,” to bearing date the day of for securing the sum

(d) See section 41, *ante*, p. 801.

(e) See section 46, *ante*, p. 801.

Appendix. of and interest [or, if such transfer be by endorsement, the within security], and all my right, estate, and interest in and to the money thereby secured [and if the transfer be of a mortgage, and in and to the tolls, money, and property thereby assigned].

In witness whereof I have hereunto set my hand and seal this day of
one thousand eight hundred and

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. CAP. 18.)(a)

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a Public Nature.

[8th May, 1845.]

Act to apply to all undertakings authorised by Acts hereafter passed.

This Act shall apply to every undertaking authorised by any Act which shall hereafter(b) be passed, and which shall authorise the purchase and taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.(c)

Interpretation in this Act.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows :—

“Special Act :”

II. The expression “the special Act,” used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word “prescribed,” used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur, shall be construed as if instead of the word “prescribed,” the expression

“Prescribed :”

“prescribed for that purpose in the special Act” had been used; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and the expression “the promoters of the undertaking” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.(d)

“The works :”

“Promoters of the undertaking :”

“the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and the expression “the promoters of the undertaking” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.(d)

Interpretations in this and the special Act :

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Number :

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :

Gender :

Words importing the masculine gender only shall include females ;

“Lands :”

The word “lands” shall extend to messuages, lands, tenements, and hereditaments of any tenure :(e)

“Lease :”

The word “lease” shall include an agreement for a lease :

(a) This Act is incorporated with the Public Health Act, 1875, s. 176, *ante*, p. 246. It is also incorporated with other Acts included in this Appendix, *e.g.*, the Baths and Wash-houses Act (9 & 10 Vict. c. 74), s. 23. It is amended by 23 & 24 Vict. c. 15; 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15; 58 & 59 Vict. c. 11, *post*. The marginal notes to this Act are printed as in the second edition of the Statutes Revised.

(b) See, as to a corporation incorporated before 1845, but empowered to take lands under later Acts, *In re Mills Estate*, 34 Ch. D. 24; 56 L. J. Ch. 60; 55 L. T. (N.S.) 465; 35 W. R. 65; 51 J. P. 151. A private charity incorporated by charter is not an undertaking of a public nature within the meaning of this Act. *Re Sion College*, 57 L. T. (N.S.) 743.

(c) The preamble and part of section 1 were repealed by the Statute Law Revision Act, 1891 (54 & 55 Vict. c. 67).

(d) As to the meaning of these expressions when read as incorporated with the Public Health Act, 1875, see section 316 of that Act, *ante*, p. 410.

(e) It seems to be doubtful whether the definition includes incorporeal hereditaments,

The word "month" shall mean calendar month :

The expression "superior courts" shall mean Her Majesty's superior courts of record at *Westminster* : (f)

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :

The word "sheriff" shall include under sheriff, or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together :

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be entitled to sell and convey lands to the promoters of the undertaking :

The expression "the bank" shall mean the Bank of *England* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *England* : (f)

Appendix.

"Month :"
"Superior
courts :"

"Oath :"

"County :"

"The sheriff :"

"The clerk of
the peace :"

"Justices :"

"Two justices :"

"Owner :"

"The bank :"

Short title of
the Act.

Form in which
portions of this
Act may be
incorporated
with other Acts.

Purchase of
lands by agree-
ment.

Power to purchase
lands by
agreement.

IV. In citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

V. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portions only of the provisions of this Act ; be it therefore enacted that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows :—

VI. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by

such as casements. See *Great Western Railway Company v. Swindon, &c., Railway Company*, 9 App. Cas. 787 ; 53 L. J. Ch. 1075 ; 32 W. R. 957 ; 48 J. P. 921. Compare the definition in the Public Health Act, 1875, s. 4, *ante*, p. 6, and see section 176, *ante*, p. 246.

(f) Words relating to Ireland only are here omitted.

Appendix. — this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and all estates and interests in such lands of what kind soever. (a)

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release (that is to say), all corporations, tenants in tail or for life, married women seised in their own right, (b) or entitled to dower, guardians, committees of lunatics and idiots, (c) trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively, could have exercised the same power under the authority of this or the special Act, if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestui que* trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons, and that to the same extent as such *cestui que* trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under disability to exercise other powers.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by a verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, (d) and if such two surveyors cannot agree in the valuation, they by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of two such surveyors, if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase

(a) See *Errington v. Metropolitan District Railway Company*, 19 Ch. D. 559; 51 L. J. Ch. 305; 46 L. T. (N.S.) 443; 30 W. R. 663.

(b) The trustees of land for married women, who are absolutely entitled for their separate use, cannot contract to sell under this section. *Peters v. Lewes and East Grinstead Railway Company*, 18 Ch. D. 429; 50 L. J. Ch. 839; 45 L. T. (N.S.) 234; 29 W. R. 875.

(c) Note that only the committee, not the lunatic can sell. See *Re Tugwell*, 27 Ch. D. 309; 53 L. J. Ch. 1006; 51 L. T. (N.S.) 83; 33 W. R. 132.

(d) The surveyor must not be the party himself. *Peters v. Lewes, &c., Railway Company*, *supra*.

money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereafter mentioned.(e) **Appendix.**

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purpose of the special Act, to sell and convey such lands or any parts thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.(f) Where vendor absolutely entitled, lands may be sold on chief rents.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.(g) Payment of rents to be charged on tolls.

XII. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes. Power to purchase lands required for additional accommodation.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid, shall not exceed the prescribed quantity. Authority to sell and re-purchase such lands.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes,(h) purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such land except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them. Restraint on purchase from incapacitated persons.

XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Treasury . . . any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily. Municipal corporations not to sell without the approbation of the Treasury.

(e) See 23 & 24 Vict. c. 106, ss. 2—4, *post*. This declaration in writing is necessary before a claim can be made for specific performance. *Bridgend Gas and Water Company v. Dunraven*, 31 Ch. D. 219; 55 L. J. Ch. 91; 53 L. T. (N.S.) 714; 34 W. R. 119.

(f) So much of this section as provides that, save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands or for any damage done thereto shall be in a gross sum, was repealed by 23 & 24 Vict. c. 106, s. 1.

(g) See 23 & 24 Vict. c. 106, s. 2, *post*. The holder of a rentcharge may be allowed leave to distrain, notwithstanding the appointment of a receiver. *Eyton v. Denbigh, Ruthin, and Corwen Railway Company*, L. R. 6 Eq. 14, 488. The rentcharge is a first charge upon the land conveyed, but upon that land only. *Eyton v. Denbigh, Ruthin, and Corwen Railway Company*, L. R. 6 Eq. 439; 38 L. J. Ch. 74; 16 W. R. 928.

(h) See *Hooper v. Bourne*, 3 Q. B. D., at p. 272. And see also the Public Health Act, 1875, *ante*, p. 244.

Appendix.

*Purchase of
lands otherwise
than by agree-
ment.*

*Notice of inten-
tion to take
lands.*

*Service of
notices on
owner and
occupiers of
lands.*

*Service of
notice on a
corporation
aggregate.*

*If parties fail
to treat or in
case of dispute,
question to be
settled as after
mentioned.*

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:—(a)

* * * * *

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, (b) they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works, (c)

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after such diligent inquiry be found, and, in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands. (d)

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

XXI. If for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking, in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation. (e)

(a) Sections 16 and 17 relate to the subscription of capital before these clauses are put in force. They are not set out here, as they cannot apply to local authorities.

See the Public Health Act, 1875, s. 176, *ante*, p. 246, as to the conditions upon which these clauses can be put into force.

(b) As to the meaning of these words, see *Spencer v. Metropolitan Board of Works*, 22 Ch. D. 142; 52 L. J. Ch. 249; 47 L. T. (N.S.) 459; 31 W. R. 347.

(c) If notice to treat is served before applying to Parliament for power to take land, and the Act gives power to take more land than that described in the notice, such additional land may be taken, though it was not included in the notice. *In re the Corporation of Huddersfield v. Jacobson*, *ante*, p. 249. After notice to treat an owner cannot deal with his property so as to cast any additional expense on the undertakers. *In re Marylebone Improvement Act*, L. R. 12 Eq. 389; *Metropolitan Railway Company v. Woodhouse*, 34 L. J. Ch. 297; 12 L. T. (N.S.) 113; 43 W. R. 516; 11 Jur. (N.S.) 296. For a case where a builder after notice to treat suspended operations, having obtained an extension of time under his agreement, see *Birmingham and District Land Company v. London and North Western Railway Company*, 36 Ch. D. 650; 57 L. T. (N.S.) 185; 57 L. J. Ch. 121; 36 W. R. 414; and see S.C., in C. A., W. N. (1888) 236; *affd.* in C. A. 40 Ch. D. 268; 60 L. T. (N.S.) 527. As to what expenditure by an owner can be recovered as thrown away, and therefore damage by reason of the execution of the works, see *Re Streatham and General Estates Company*, 4 T. L. R. 766.

(d) As to what is a sufficient notice to treat, see *Shepherd v. Corporation of Norwich*, 30 Ch. D. 553; 54 L. J. Ch. 1050; 53 L. T. (N.S.) 251; 33 W. R. 841. The notice to treat must be for the whole estate or interest of the parties interested in the lands. *In re Chilworth Gunpowder Company and Manchester Ship Canal Company*, 8 T. L. R. 79.

(e) See sections 25—57, *post*. As to the right of a person whose lands are taken in respect of a right of pre-emption over adjoining lands, see *Clout v. Metropolitan Railway*, 48 L. T. (N.S.) 257.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected(*f*) by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

Appendix.

Disputes as to compensation where the amount claimed does not exceed 50*l*. to be settled by two justices.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration(*g*) and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award(*h*) or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Compensation exceeding 50*l*. to be settled by arbitration or jury, at the option of the party claiming compensation.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof(*i*).

Method of proceeding for settling disputes as to compensation by justices.

XXV. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for a space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the

Appointment of arbitrator when questions are to be determined by arbitration.

(*f*) That is, if injuriously affected, whether taken or not. *Reg. v. Vestry of St. Luke's, Chelsea*, L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. (N.S.) 914; 20 W. R. 209.

(*g*) That is, by arbitration under this Act, not under the Public Health Act, 1875. See *Ex parte Rayner*, 3 Q. B. D. 466; 47 L. J. Q. B. 660; 39 L. T. (N.S.) 232; 42 J. P. 807.

(*h*) The umpire has a period of three months from the time when the arbitration devolves upon him. *Sherratt v. North Staffordshire Railway Company*, 2 Phill. 475; 5 Railw. Cas. 166; 17 L. J. Ch. 161; 12 Jur. 46; *In re Bradshaw*, 12 Q. B. 562; 5 Railw. Cas. 527; 17 L. J. Q. B. 362; 12 Jur. 998. *In re Pullen and the Mayor of Liverpool*, 51 L. J. Q. B. 285; 46 L. T. (N.S.) 391; 46 J. P. 468. The court can extend the time for making the award even after the expiration of the three months. *Dare Valley Railway Company, In re*, L. R. 4 Ch. 554; 38 L. J. Ch. 417; 20 L. T. (N.S.) 717; *Rhodes v. Aire-dale Drainage Commissioners*, 1 C. P. D. 403; 45 L. J. C. P. 861; 35 L. T. (N.S.) 46; 24 W. R. 1053; *Warburton v. Haslingdon Local Board*, ante, p. 254; but see *Mackenzie v. Ascot Gas Company*, ante, p. 254.

(*i*) A settlement by justices under this section of the compensation due to any person is not an order within 11 & 12 Vict. c. 43, s. 11, and need not be made within six months. *Re Edmundson*, 53 L. J. M. C. 193, overruled. *Reg. v. Edwards*, 13 Q. B. D. 586; 53 L. J. M. C. 149; 51 L. T. (N.S.) 856; 59 J. P. 117.

Appendix.

matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of umpire.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case,*(a) shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of death of single arbitrator, the matter to begin *de novo*.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed *ex parte*.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.(b)

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.(c)

Power of arbitrators to call for books, &c.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oath necessary for that purpose.

(a) These words are repealed by 46 Vict. c. 15, *post*.

(b) The appointment of an umpire is not a condition precedent to the *ex parte* proceedings. *Shepherd v. Corporation of Norwich*, 30 Ch. D. 553; 54 L. J. Ch. 1050; 53 L. T. (N.S.) 251; 33 W. R. 841.

(c) The umpire's duty devolves upon him at the expiration of the time named, and the time within which he must make his award runs from that date, whether or not he has received notice of the failure of the arbitrators to make their award. *Skerratt v. North Staffordshire Railway Company*, *ante*, p. 813.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice^(d) make and subscribe the following declaration; (that is to say),

Appendix.

Arbitrators or umpire to make a declaration.

"I, A.B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*].

"A. B.

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.^(e)

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.^(f)

Costs of arbitrator, how to be borne.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award to be delivered to the promoters of the undertaking.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.^(g)

Submission may be made a rule of court.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form.^(h)

Award not void through error in form.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be

Promoters of the undertaking to give notice before summoning a jury.

(d) That is, any justice, not merely one having jurisdiction where the lands are situated. *Davies v. South Staffordshire Railway Company*, 21 L. J. M. C. 52; 15 Jur. 1133; 2 L. M. & P. 599.

(e) As to when a failure to make this declaration will be a ground for setting aside the award, see *Levick v. Epsom, &c., Railway Company*, 1 L. T. (N.S.) 60. As to the time within which the declaration may be made, see *Bradshaw's Arbitration*, 12 Q. B. 562; 5 Railw. Cas. 527; 17 L. J. Q. B. 362; 12 Jur. 998.

(f) The right to costs depends upon the section, and not upon the provisions of the Public Health Act. *Ex parte Rayner, ante*, p. 813. If an offer is made but refused and afterwards during the arbitration withdrawn by consent, and the subsequent award is less than the offer, the promoters of the undertaking cannot claim the benefit of this section. *Foster v. Corporation of Sheffield*, 59 J. P. 404; 14 R. July 206; 72 L. T. (N.S.) 549. Where costs are awarded, the execution of a conveyance is not a condition precedent to the payment of such costs. *Capell v. Great Western Railway Company*, 11 Q. B. D. 345; 48 L. T. (N.S.) 505; 31 W. R. 555.

The costs of a special case stated by the arbitrator are costs incidental to the arbitration within the meaning of the above section. *Holliday v. Mayor, &c., of Wakefield*, 20 Q. B. D. 699; 57 L. J. Q. B. 620; 57 L. T. (N.S.) 559; 59 L. T. (N.S.) 248; 52 J. P. 644.

As to the taxation of the costs, see 58 & 59 Vict. c. 11, *post*.

(g) This does not enable an award to be enforced by motion. *Newbold v. Metropolitan Railway Company*, 14 C. B. (N.S.) 405; *Re Walker and Beekenhams Local Board*, 48 J. P. 264.

(h) But it may be set aside if it include compensation in respect of a claim not legally enforceable. *Beckett v. Midland Railway Company*, L. R. 1 C. P. 241; *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 3 Ex. 320. By proceeding to arbitration the undertakers waive any misdescription of the claimant's interest. *Lovering v. City of London, &c., Subway Company*, 7 T. L. R. 600.

Appendix. purchased by them from such party, and for the damage to be sustained by him by the execution of the works.(a)

Warrant for summoning jury to be addressed to the sheriff ;

or in certain cases to coroner or ex-sheriff or ex-coroner.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose,(b) and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them ; and if such sheriff be interested(c) in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute ; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices ; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner or other person acting in place of sheriff.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place, and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately after receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.(d)

Jury to be impanelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issue joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid ; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to preside.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law ; and if either party so request in writing, the sheriff shall summon before him any person con-

(a) An irregularity in complying with this section may be waived. See *Emmanuel Hospital v. Metropolitan District Railway Company*, 19 L. T. (N.S.) 692. See also *Reg. v. Manley Smith*, 67 L. T. (N.S.) 197 ; 40 W. R. 333 ; 56 J. P. 729. As to this offer, see the note to section 51 *post*, p. 818.

(b) Separate juries cannot be summoned in respect of each different property of the same owner included in the notice to treat. *Ecclesiastical Commissioners v. Commissioners of Sewers*, 14 Ch. D. 305 ; 28 W. R. 824.

(c) As to the interest of the sheriff, see *Reg. v. Manchester, Sheffield, and Lincolnshire Railway Company*, L. R. 2 Q. B. 336 ; 36 L. J. Q. B. 171 ; 16 L. T. (N.S.) 173 ; 15 W. R. 676 ; 31 J. P. 453.

(d) The sheriff must summon a fresh jury if the first inquisition has been quashed. *Horrocks v. Metropolitan Railway Company*, 19 C. B. (N.S.) 139. A verdict will not be set aside on the ground that some of the jurymen were not qualified, the remedy in such case being by challenge. *In re Chelsea Waterworks*, 10 Exch. 731.

sidered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

Appendix.

Witnesses to be summoned.
View by jury.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon the jury under this or the special Act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other matter unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on sheriff and jurors for default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Penalty on witnesses making default.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

Notice of inquiry.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

If claimant make default compensation to be determined by surveyor.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Jury to be sworn.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.(e)

Sums to be paid for purchase of lands and for damage, to be assessed separately.

L. The sheriff before whom the inquiry shall be held shall give judgment for the purchase money or compensation awarded by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the

Verdict and judgment to be recorded.

(e) These provisions are directory only. *Re Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. Q. B. 362; 12 Jur. 998; 5 Railw. Cas. 527.

As to the power of the court to quash a verdict for misdirection or improper rejection of evidence, see *Streatham and General Estates Company v. Commissioners of Public Works*, 52 J. P. 615.

Lands may be held with lands taken within the meaning of this section though not actually adjoining. *Essex v. Acton Local Board*, 14 App. Cas. 153; 58 L. J. Q. B. 594; 61 L. T. (N.S.) 1; 53 J. P. 756; 5 T. L. R. 395.

Appendix. lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.(a)

Costs of the inquiry how to be borne.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered(b) by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.(c)

Particulars of the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of *England or Ireland*, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.(d)

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interests therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provisions hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid, to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of

(a) Interest is payable not from date of verdict, but from the time when the promoters might prudently have taken possession, *i.e.*, in a case where the title has not been accepted before verdict, when a good title is shown. *In re Pigott v. Great Western Railway Company*, 18 Ch. D. 146; 50 L. J. Ch. 679; 44 L. T. (N.S.) 792; 29 W. R. 727, disapproving *Re Eccleshill Local Board*, 13 Ch. D. 365.

(b) This applies only to an offer made under section 38. *Reg. v. Smith*, 12 Q. B. D. 481; 53 L. J. Q. B. 115; 32 W. R. 275.

(c) The claimant is not entitled to any costs if an award is made in his favour in respect of a claim for which he has no right to compensation. *Todd v. Metropolitan District Railway Company*, 24 L. T. (N.S.) 435; 19 W. R. 720. As to the offer of compensation, see section 38, *ante*, p. 815. As to costs of an abortive inquiry, see *Reg. v. North London Railway Company*, 51 L. J. Q. B. 241; 30 W. R. 272. The conveyance by the owner is not a condition precedent to the payment of costs due to him. *Capell v. Great Western Railway Company*, 11 Q. B. D. 345; 52 L. J. Q. B. 348; 48 L. T. (N.S.) 515; 31 W. R. 555; 47 J. P. 246. Where the sum awarded was paid into court and the taxed costs paid to the claimant who afterwards was found to have no title, it was held that the costs so paid could not be recovered back. *London County Council v. Campbell*, 6 T. L. R. 420.

(d) The decision of the master cannot be reviewed. *Sandbach Charity v. North Staffordshire Railway Company*, 3 Q. B. D. 1; 47 L. J. Q. B. 10; 37 L. T. (N.S.) 391; 26 W. R. 229. See also as to the taxation of the costs, 58 & 59 Vict. c. 11, *post*.

Appendix.

the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the time and place so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.^(e)

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them, that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such justices or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and

^(e) The special jury must be summoned if notice is given within twenty-one days limited by section 68 without any further extension of time. *Glyn v. Aberdare Railway Company*, 6 C. B. (N.S.) 359; 28 L. J. C. P. 271; 5 Jur. (N.S.) 1011.

Appendix. honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

“A. B.”

“Made and subscribed in the presence of . . .”
And if any surveyor shall corruptly make such declaration, or having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation, &c., to be produced to the owner of the lands on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase money and compensation, how to be estimated.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.^(a)

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid, could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within fourteen days.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

Costs of the arbitration.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

(a) Compensation under this section may be awarded in one sum. *In re Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. Q. B. 362; 12 Jur. 998; 5 Railw. Cas. 527.

Compensation is payable under this section in respect of land not taken which is the property of a person some of whose other land is taken, but which is separated from the land taken by intervening land belonging to other owners, e.g., a line of railway. *Reg. v. Essex*, 14 App. Cas. 153; 58 L. J. Q. B. 594; 61 L. T. (N.S.) 1; 53 J. P. 756. So where windows were obstructed, some of which were ancient lights and some not, it was held that compensation must be paid in respect of the whole. *London, Tilbury, and Southend Railway Company v. Gover's Walk Schools (Trustees of)*, 24 Q. B. D. 326; 59 L. J. Q. B. 162; 62 L. T. (N.S.) 306; 38 W. R. 343.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected (b) by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

Appendix.

Compensation to be settled by arbitration or jury, at the option of the party claiming compensation.

And with respect to the purchase money or compensation coming to parties *Application of compensation.*

(b) The damage awarded under this section must be damage in respect of which an action would have lain but for the statutory powers justifying it, and must arise from the execution of the works, not from the use of them when executed. *Ricket v. Metropolitan Railway Company*, L. R. 2 H. L. 175; 36 L. J. Q. B. 205; 16 L. T. (N.S.) 542; 15 W. R. 937; 31 J. P. 484; *Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 171; *Reg. v. Metropolitan Board of Works*, L. R. 4 Q. B. 358; 38 L. J. Q. B. 201; 17 W. R. 1094; 10 B. & S. 391; *Metropolitan Board of Works v. M'Carthy*, L. R. 7 H. L. 243; 43 L. J. C. P. 385; 31 L. T. (N.S.) 182; 23 W. R. 115; 38 J. P. 820; *Buecleuch (Duke of) v. Metropolitan Board of Works*, L. R. 5 H. L. 418; 36 J. P. 724; *Caledonian Railway Company v. Walker's Trustees*, 7 App. Cas. 259; 46 L. T. (N.S.) 826; 30 W. R. 569; 46 J. P. 676. For the numerous cases decided upon this section reference should be made to *Lloyd on Compensation and Jepson's Lands Clauses Act*.

A house may have a special value, as, for example, a hotel or public-house, and if so, the owner is entitled to be compensated for the depreciation in value of the house as having that special value. *Wadham v. N. E. Railway Company*, 16 Q. B. D. 227; 55 L. J. Q. B. 272; 52 L. T. (N.S.) 894; 34 W. R. 342; 49 J. P. 599.

As to compensation for the right of a local authority to access to a sewer, see *Birkenhead (Mayor of) v. L. & N. W. Railway Company*, 15 Q. B. D. 572; 55 L. J. Q. B. 48; 49 J. P. 135.

Compensation is payable for injuriously affecting land during the execution of the works if the injury is sufficient to lessen the value of the property. *Ford v. Metropolitan Railway Company*, 17 Q. B. D. 12; 55 L. J. Q. B. 296; 54 L. T. (N.S.) 718; 34 W. R. 426; 50 J. P. 661.

As to compensation for a subsequent alteration in the construction of the works, see *Attorney-General v. Metropolitan Railway* [1894], 1 Q. B. 384; 69 L. T. (N.S.) 811; 42 W. R. 381; 58 J. P. 348; 9 R. 598.

As to compensation for cutting off access to houses, see *Furness Railway Company v. Cumberland Co-operative Society*, 49 J. P. 292.

As to compensation for injuriously affecting ancient lights, when the Act authorised the purchase of easements, see *Wigram v. Fryer*, 36 Ch. D. 87; 56 L. J. Ch. 1098; 57 L. T. (N.S.) 255; 36 W. R. 100.

Where a lessee, pursuant to a power in his lease, determined his lease before injury had actually been done to him, it was held that he could not recover compensation by reason of his having had to remove to other premises. *Reg. v. Poulter*, 20 Q. B. D. 132; 56 L. J. Q. B. 581; 57 L. T. (N.S.) 488; 36 W. R. 117; 52 J. P. 244.

For a case of "injuriously affecting," by reason of dealing with a highway, so as to divert the traffic, see *Metropolitan Board of Works v. Howard*, 5 T. L. R. 732.

As to injuriously affecting mills by taking water, see *Page v. Kettering Waterworks Company*, 8 T. L. R. 228.

Appendix. having limited interests, or prevented from treating, or not making title, be it enacted as follows :—

Purchase money payable to parties under disability amounting to 200*l.* to be deposited in the bank.

LXIX. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant-General of the Court of Chancery,^(a) to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Application of moneys deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes;^(b) or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct;^(c) or

In payment to any party becoming absolutely entitled to such money.^(d)

Order for application and investment meanwhile.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery,^(a) made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three *Per Centum* Consolidated or Three *Per Centum* Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees

LXXI. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in

(a) Some words are here repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19)

(b) *Ex parte Tottenham*, 13 L. R. Ir. 479. As to costs when purchase money is sought to be applied in paying off incumbrances, see *In re Dublin, Wicklow, and Wexford Railway Company*, 25 L. R. Ir. 175.

(c) See *Re Ward's Estates*, 28 Ch. D. 100; 54 L. J. Ch. 231; 33 W. R. 149.

(d) See *In re the Parson, &c., of St. Alban's*, 55 L. T. (N.S.) 314. The purchase money for land belonging to a waterworks company, forming part of their pipe track, was held rightly paid into Court under this section, and was ordered to be paid out to the company. *Re Chelsea Waterworks Company*, 56 L. J. Ch. 640; 56 L. T. (N.S.) 421. See further as to persons absolutely entitled, *Re Haberdashers Company*, 55 L. T. (N.S.) 758. *Ex parte Bowman*, W. N. (1881), 179. It is in the discretion of the Court whether money will be ordered to be paid out to trustees of settled lands. *In re Smith*, 40 Ch. D. 386; 58 L. J. Ch. 108; 60 L. T. (N.S.) 77; 37 W. R. 199. For a case of apportionment of the costs of re-investment where the petition related to two funds in Court, see *Ex parte perpetual Curate of Bilston*, 37 W. R. 460. An apportionment cannot be made under this section between a tenant for life and remainderman. *Re Robinson's Settlement Trusts* [1891], 3 Ch. 129; 60 L. J. Ch. 776; 65 L. T. (N.S.) 244; 39 W. R. 632.

Appendix.

case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the Court for that purpose.(e)

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity, of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committee, or trustees of such persons.

Sums not exceeding 20*l.* to be paid to parties.

LXXIII. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering, with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

All sums payable under contract with persons not absolutely entitled, to be paid into Bank or to trustees.

LXXIV. Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.(f)

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXV. Upon deposit in the Bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute

Upon deposit being made, the owners of the lands to convey or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

(e) Under this section where a sum of 34*l.* had been paid into Court, payment out was directed to be made to a tenant for life who undertook to spend it in permanent improvements. *Ex parte Smith, Re Kell's guardians*, 21 L. R. Ir. 346.

(f) See *Re Barrington, Gamlen v. Lyon*, 33 Ch. D. 523; 55 L. T. (N.S.) 87; 35 W. R. 164. This case was discussed and distinguished in *Re Robinson's Settlement Trusts* [1891], 3 Ch. 129; 60 L. J. Ch. 776; 65 L. T. (N.S.) 244; 39 W. R. 632. A lessor having a right of re-entry in respect of non-payment of rent was held to be a person interested in compensation to the lessee paid into court, such right being an incumbrance on the leasehold interest. *Re London Street, Greenwich*, 57 L. T. (N.S.) 673.

Appendix.

a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation, either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the Kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.^(a)

Upon deposit being made a receipt to be given, and the lands to vest in the promoters upon a deed poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and

(a) Land cannot be acquired under this and the next section unless the owner be found. *Wells v. Chelmsford Local Board*, 15 Ch. D. 108; 49 L. J. Ch. 827; 43 L. T. (N.S.) 378; 29 W. R. 381; 45 J. P. 6.

As to the procedure when the land in respect of which the purchase money is claimed by the Crown or by other claimants, see *Ex parte Reeve, Re Manor of Lovestoft v. Great Eastern Railway Company*, 24 Ch. D. 253; 53 L. J. Ch. 912; 49 L. T. (N.S.) 523.

As to the procedure on applications for payment of money out of Court, see R. S. C. Order iv., r. 2; *Ex parte Lord Mayor of London*, 25 Ch. D. 384; 53 L. J. Ch. 6; 49 L. T. (N.S.) 437; 32 W. R. 87; *Ex parte Maidstone and Ashford Railway Company*, 25 Ch. D. 138; 52 L. J. Ch. 127; 49 L. T. (N.S.) 777; 32 W. R. 181; *Re Brandram*, 25 Ch. D. 365; 53 L. J. Ch. 331; 49 L. T. (N.S.) 558; 32 W. R. 180; *Re Madgwick*, 25 Ch. D. 371; 53 L. J. Ch. 333; 49 L. T. (N.S.) 560; 32 W. R. 512; *Re Cullon's Will*, 25 Ch. D. 240; 53 L. J. Ch. 329; 49 L. T. (N.S.) 566; 32 W. R. 167; *Ex parte Jesus College*, 50 L. T. (N.S.) 583; *Re Bethlehem and Brideveil Hospitals*, 30 Ch. D. 541; 54 L. J. Ch. 1143; 53 L. T. (N.S.) 558; *Re Haworth*, W. N. (1885), p. 48.

As to the rights of a tenant for life of settled land, see *Re Griffiths' Will*, 49 L. T. (N.S.) 161.

interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Appendix.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.(b)

Application of
moneys so
deposited.

LXXIX. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.(c)

Party in posses-
sion to be
deemed the
owner.

LXXX. In all cases of money deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking (that is to say) the costs of the purchase or taking(d) of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities,(d) and of the re-investment thereof in the purchase of other lands(e) and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Costs in cases
of money
deposited.

(b) Where 400*l.* was awarded, of which 150*l.* was for a leasehold interest which was mortgaged, and 250*l.* for trade damages, &c., the court ordered the 250*l.* to be paid out at once. *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472.

An order was made for *interim* investment of a fund arising out of charity lands taken, in *Le Stafford's Charity*, 57 L. T. (N.S.) 846. On petition for payment out of moneys deposited for purchase of a leasehold interest, the court refused to make the order conditional on the lease being handed over. *Taylor v. Whittaker*, W. N. (1890), 9.

(c) As to the right to the value of a reversion after the expiration of a term when the reversioner is unknown, see *Gedge v. Commissioners of Works* [1891], 2 Ch. 630; 60 L. J. Ch. 332; 65 L. T. (N.S.) 359; 39 W. R. 598.

(d) See *Charlton v. Rolleston*, 28 Ch. D. 137; 54 L. J. Ch. 233; 51 L. T. (N.S.) 612.

(e) See *Re Gedling Rectory*, 53 L. T. (N.S.) 244; *Drake v. Greaves*, 33 Ch. D. 609; 56 L. J. Ch. 133; 55 L. T. (N.S.) 353; 34 W. R. 757; *Attorney-General v. St. John's Hospital, Bath* [1893], 3 Ch. 151; 62 L. J. Ch. 707; 69 L. T. 178; 42 W. R. 172; 3 R. 661; *Re the Bishopsgate Foundation* [1894], 1 Ch. 185; 63 L. J. Ch. 167; 70 L. T. (N.S.) 231; 42 W. R. 199; *Re Arden*, 70 L. T. (N.S.) 506.

Appendix. And with respect to the conveyances of lands, be it enacted as follows :—

Conveyances.

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit ; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned ; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.(a)

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery . . . upon an order of the same court, to be obtained upon petition in a summary way by either of the parties ; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of

(a) Where schools had been taken, the costs of settling a new scheme for applying the purchase money in buying a new site and erecting fresh schools were held too remote to be recoverable under this provision. *Re St. Paul's Schools, Finsbury*, 52 L. J. Ch 454 ; 48 L. T. (N.S.) 412 ; 31 W. R. 424. But compare *Re Butchers' Company*, 53 L. T. (N.S.) 491. Costs of proving their encumbrances were refused to mortgagees of reversionary interests in the funds in court, the mortgages being subsequent to the payment into court. *Re Gough's Trusts*, 24 Ch. D. 569 ; 53 L. J. Ch. 200 ; 49 L. T. (N.S.) 494 ; 32 W. R. 147. But this decision was dissented from in *Re Olive's Estate*, 44 Ch. D. 316 ; 59 L. J. Ch. 360 ; 62 L. T. (N.S.) 626 ; 38 W. R. 459. See as to costs of adverse litigation, *Re Cutling's Estate*, W. N. (1890) 75. See as to the right to costs in the case of a lessor having a right of re-entry in respect of unpaid rent, *Re London Street, Greenwich*, 57 L. T. (N.S.) 673 ; in the case of the trustee of a settlement relating to land taken, *Re English's Settlement*, 39 Ch. D. 556 ; 57 L. J. Ch. 1048 ; 60 L. T. (N.S.) 44 ; 37 W. R. 191. As to the costs of successive orders for payment of dividends, see *In re Rider*, 37 Ch. D. 595 ; 57 L. J. Ch. 459 ; 58 L. T. (N.S.) 783. As to procedure by petition or summons, see *Re Hargrave's Trust, Ex parte The Mayor, &c., of Bradford*, 58 L. T. (N.S.) 367 ; *Re De Grey's Entailed Estate*, W. N. (1887) 241. The undertakers take the risk of having to pay the costs in cases where money in court is dealt with under powers contained in a settlement. *Re Brooshoft's Settlement*, 49 Ch. D. 250 ; 58 L. J. Ch. 654 ; 61 L. T. (N.S.) 320 ; 37 W. R. 744. Undertakers were ordered to pay costs of re-investing consols in which purchase money had been invested, on their being redeemed by Government. *Re Brown*, 59 L. J. Ch. 530 ; 63 L. T. (N.S.) 131 ; 38 W. R. 129. As to the costs of payment out when there has been a refusal to show title, see *Re St. Luke's Vestry*, W. N. (1889) 102. As to interest on costs and the form of order, see *Re Bird's Estate*, W. N. (1889) 182.

Rule 11 of Schedule I, Part 1, of the General Order under the Solicitors Remuneration Act, 1881, does not apply to vendor's costs under this section. *In re Stewart*, 41 Ch. D. 494 ; 60 L. T. (N.S.) 737 ; 37 W. R. 484. And see *In re Burdett and Company* [1895], 2 Ch. 136 ; 64 L. J. Ch. 561 ; 72 L. T. (N.S.) 417, 639 ; 43 W. R. 534.

The costs of conveyance were held to include costs of taking out letters of administration to the assignees of a lease through whom the owner claimed. *Ex parte Keatley*, 28 L. R. Ir. 265.

Appendix.

the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed and the amount thereof shall be ascertained by the said master and deducted by him accordingly in his certificate of such taxation.(b)

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:— *Entry on lands.*

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein; Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof. *Payment of price to be made previous to entry, except to survey, &c.*

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds *per centum per annum*, from the time of entering on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.(c) *Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.*

(b) The promoters cannot tax these costs after payment. *Ex parte Somerville*, 23 Ch. D. 167; 52 L. J. Ch. 438; 48 L. T. (N.S.) 416; 31 W. R. 518.

(c) If no actual entry be made after deposit of security, then the lands cannot be considered to have been taken under this section. *Reg. v. Manley Smith*, 67 L. T. (N.S.) 197; 40 W. R. 333; 56 J. P. 729; 8 T. L. R. 310. As to entry under this section when the time for the execution of the works was about to expire, see *Loosemore v. Tiverton, &c., Railway Company*, 9 App. Cas. 480; 53 L. J. Ch. 812; 50 L. T. (N.S.) 637; 32 W. R. 929; 48 J. P. 372. As to entry on land when the promoters were entitled to acquire only an easement of tunnelling, see *Hill v. Midland Railway Company*, 21 Ch. D. 143; 51 L. J. Ch. 774; 47 L. T. (N.S.) 225; 30 W. R. 774.

Appendix.

Upon deposit
being made
cashier to give
receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privy of the Accountant-General of the Court of Chancery to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to
remain as a
security, and to
be applied under
the direction of
the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company
may pay the
deposit money
into the Bank
by way of
security during
the time that
the office of the
Accountant-
General is
closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of *England* the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

Penalty on the
promoters of
the undertaking
entering upon
lands without
consent before
payment of the
purchase money.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully (a) enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; (b) and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day

Under the corresponding section of the Lands Clauses Consolidation (Scotland) Act, 1845, it was held that where the owner of lands entered upon under that section dispensed with the giving of a bond, he was nevertheless entitled to 5 per cent. interest upon the compensation from the date of the promoters' entering upon his land till the compensation was paid; and was entitled to payment of such interest out of the sum deposited by the promoters. *West Highland Railway Company v. Place*, 21 Ct. Sess. Cas. (4th ser.) 576; 31 Scottish Law Reporter, 455.

(a) This does not include an entry under a mistaken belief of right. *Steele v. Midland Railway Company*, 21 L. T. (N.S.) 387.

(b) See section 136, *post*, p. 840.

they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bond fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Appendix.

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provisions hereinbefore contained shall not be held conclusive as to the right of entry on any such land by the promoters of the undertaking.

Decision of justices not conclusive as to the right of the promoters.

XCI. If in any case in which according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.(c)

Proceedings in case of refusal to deliver possession of lands.

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.(d)

Parties not to be required to sell part of a house.

(c) The aid of the sheriff is not necessary unless the entry is actually resisted. *Loosemore v. Tiverton, &c., Railway Company*, ante, p. 827.

(d) House includes curtilage and garden. *Grosvenor v. Hampstead Junction Railway Company*, 1 De G. & J. 446; 26 L. J. Ch. 731; *Governors of St. Thomas's Hospital v. Charing Cross Railway Company*, John. & H. 400; 30 L. J. Ch. 395. In one case it was held that a paddock was part of a house within this section. *Barnes v. Southsea Railway Company*, 27 Ch. D. 536; 32 W. R. 976. So also two houses which communicated internally, and were used as one. *Seigenberg v. Metropolitan District Railway Company*, 49 L. T. (N.S.) 554; 32 W. R. 333. But not two houses at one of which a manufacture is carried on, and at the other of which, in another street, the goods are sold. *Benington v. Metropolitan Board of Works*, 54 L. T. (N.S.) 837; 50 J. P. 740; see *Reddin v. Metropolitan Board of Works*, 27 J. P. 4. The acceptance by a company's solicitor of a notice under this section to take property, which the company is not compellable to take, is not binding on the company. *Treadwell v. London and South Western Railway Company*, 54 L. J. Ch. 565; 51 L. T. (N.S.) 894; 33 W. R. 272. As to what is a manufactory, see *Richards v. Swansea Improvement and Tramways Company*, 9 Ch. D. 425; 26 W. R. 764; *Brook v. Manchester, Sheffield, and Lincolnshire Railway Company*, 43 W. R. 698. The test whether the undertakers are compellable to take along with a garden, stables, &c., for which they have given notice to treat, a house enjoyed therewith but separated therefrom by a road, is whether the garden, stables, &c., would have passed by a conveyance of the house simply. *Kerford v. Seacombe Railway Company*, 57 L. J. Ch. 270; 58 L. T. (N.S.) 445; 36 W. R. 431; 52 J. P. 487. A notice referring to one tenement and part of another tenement, but abandoned altogether when the owner demands that the whole of the other tenement shall be taken, cannot be treated as still existing in respect of the first-mentioned tenement. *Thompson v. Tottenham and Forest Gate Railway*, 67 L. T. (N.S.) 416; 57 J. P. 181.

Appendix.*Intersected lands.*

Owners of intersected lands may insist on sale.

And with respect to small portions of intersected land, be it enacted as follows :—
 XCIII. If any lands not being situate in a town^(a) or built upon shall be so cut through and divided by the works as to leave, either on both sides thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left in which the same can be thrown, so as to be conveniently occupied therewith ; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of he undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands^(b) have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation ; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Copyholds.

Conveyance of copyhold lands to be enrolled.

And with respect to copyhold lands, be it enacted as follows :—

XCV. Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel ; and on the payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment ; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands as if the same had been of freehold tenure ; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Copyhold lands conveyed to the promoters to be enfranchised.

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation ; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other

Compensation for enfranchisement.

(a) See *London and South Western Railway Company v. Blackmore*, L. R. 4 H. L. 610 ; 39 L. J. Ch. 713 ; 23 L. T. (N.S.) 504 ; 19 W. R. 305 ; *Carrington v. Wycombe Railway Company*, L. R. 3 Ch. 377 ; 37 L. J. Ch. 213 ; 18 L. T. (N.S.) 96 ; 16 W. R. 494.

(b) Whether situate in a town or elsewhere. *Eastern Counties Railway v. Marriage*, 9 H. L. C. 32 ; 31 L. J. Ex. 73 ; 8 W. R. 748 ; 7 Jur. (N.S.) 53.

matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same shall be allowed for. (c) Appendix. —

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Lord of the manor to enfranchise on payment of compensation.

Enfranchisement by deed poll in certain cases.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Apportionment of copyhold rents.

And with respect to any such lands, being common or waste lands, be it enacted as follows:—(d) Common lands. —

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Compensation for common lands, where held of a manor, &c., how to be paid.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

(c) The compensation must be assessed on the value of the land when taken, not on the improved value of the land by reason of the undertaker's works, no stop having been taken for thirteen years by the company to obtain enfranchisement. *Lowther v. Coledonian Railway Company* [1892], 1 Ch. 73; 61 L. J. Ch. 108; 66 L. T. (N.S.) 62; 40 W. R. 225. The compensation is to be assessed as on the expiration of a month after entry and not as when he enfranchisement is completed. *Re Marquis of Salisbury and London and North Western Railway Company* [1892], 1 Ch. 75.

(d) This part of the Act has been amended in some important particulars by the Common-
 able Rights Act, 1882 (45 Vict. c. 15), *post*.

Appendix.

Deed poll to be executed in certain cases.

conveyance ; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation for common lands where not held of a manor, how to be ascertained.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights ; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting ; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed ; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

Meeting to appoint a committee.

CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights ; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein ; and all such parties shall be bound by such agreement ; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same ; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.(a)

Disputes to be settled as in other cases.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

If no committee be appointed, the amount to be determined by a surveyor.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

(a) As to the application of compensation money for recreation grounds and field gardens, see the Commonable Rights Act, 1882 (45 Vict. c. 15), s. 3, *post*.

CVII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Appendix.

Upon payment of compensation payable to commoners the lands to vest.

And with respect to lands subject to mortgage, be it enacted as follows:—(b)

Lands in mortgage.

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.(c)

CIX. If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made

Sum to be paid when mortgage

(b) As to equitable mortgagees and their rights, see *Martin v. London, Chatham, and Dover Railway Company*, L. R. 1 Ch. 501; 13 L. T. (N.S.) 355; 14 W. R. 24.

(c) Interest is payable under this section from the time when possession might have been taken if a good title could be shown. In the case of land subject to mortgage interest is payable by the vendor to the mortgagee in lieu of notice. *Spencer Bell v. London and South-Western Railway Company*, 33 W. R. 771.

Appendix.

exceeds the
value of the
lands.

Deposit of
such sum when
refused on
tender.

Sum to be paid
where part only
of mortgaged
lands taken.

Deposit of
such sum when
refused on
tender.

by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such land, and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation ; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession ; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation ; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend ; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid ; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee ; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act in the case of moneys required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were

then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Appendix.

Powers of mortgagee for recovery of residue of mortgage debt.

Compensation to be made in certain cases if mortgage paid off before the stipulated time

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

Rentcharges.

And with respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or encumbrance not hereinbefore provided for, be it enacted as follows:—

Consideration to be paid for release of lands from rentcharges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part of land from charge.

CXVI. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or encumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment, or encumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Appendix.

Charge to
continue on
lands not taken.

CXVIII. If any such lands be so released from any such charge or encumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Leases.

Where part only
of lands under
lease taken, the
rent to be
apportioned.

And with respect to lands subject to leases, be it enacted as follows:—

CXIX. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.^(a)

Tenants to be
compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.^(b)

Compensation to
be made to
tenants from
year to year, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices^(c) in case the parties differ about the same; and upon

^(a) An interest created by an owner after notice to treat is not a subject for compensation. *Re Marylebone Improvement Act*, L. R. 12 Eq. 389; 40 L. J. Ch. 697; *Wilkins v. Mayor of Birmingham*, 25 Ch. D. 78; 49 L. T. (N.S.) 468; 32 W. R. 118; 48 J. P. 231.

^(b) As to the date from which the apportioned rent becomes payable, see *Ball v. Graves*, 18 L. R. Ir. 224.

^(c) That is, if the land be taken (*Reg. v. Manchester, Sheffield, and Lincolnshire Railway Company*, 4 E. & B. 88); but if the lands are injuriously affected, the proceedings are

payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Appendix.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease or grant to be produced.

CXXIII. And be it enacted that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special Act.(d)

Limit of time for compulsory purchase.

And with respect to the interest in lands which have by mistake been omitted to be purchased, be it enacted as follows:—

Interests omitted to be purchased.

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate,

Purchase by promoters of the undertaking after entry on lands, of interests the purchase whereof may have been omitted by mistake.

Mesne profits to be accounted for.

under section 68, *ante*, p. 821; *Reg. v. Sheriff of Middlesex*, 31 L. J. Q. B. 261; and see *Reg. v. Stone*, L. R. 1 Q. B. 529; 1 Jur. (N.S.) 419; *Bexley Heath Railway Company v. North*, 64 L. J. M. C. 17; 70 L. T. (N.S.) 903; 10 T. L. R. 528. The complaint need not be made within six months under 11 & 12 Vict. c. 43, s. 11; *Reg. v. Hannay*, 44 L. J. M. C. 27; 31 L. T. (N.S.) 702; 23 W. R. 164; 39 J. P. 534; *Reg. v. Edwards*, *ante*, p. 812. Compensation for the residue of a lease which will expire in less than a year must be determined by justices under this section, and not by arbitration. *Reg. v. Great Northern Railway Company*, 2 Q. B. D. 151; 46 L. J. Q. B. 4; 35 L. T. (N.S.) 551; 25 W. R. 41; 41 J. P. 197.

If a notice to treat be given, but nothing done thereunder, and the lands are afterwards taken under section 85, then the interest of the tenant at the time when the lands are so taken is to be considered, and not his interest at the time when the notice to treat was given. *Reg. v. Kennedy* [1893], 1 Q. B. 533; 62 L. J. M. C. 168; 68 L. T. (N.S.) 454; 41 W. R. 380; 57 J. P. 346; 5 R. 270. See *Bexley Heath Railway Company v. North*, *supra*.

(d) It is sufficient if notice to treat is given within the three years. See *Salisbury v. Great Northern Railway Company*, 17 Q. B. 840.

Appendix. right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.(a)

How value of such interests and mesne profits shall be estimated.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such interests.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Sale of superfluous land.

And with respect to lands acquired by the promoters of the undertaking, under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows : (b)

* * * * *

Lands not in a town or built upon, &c., to be offered to owner of lands from which they were originally taken, or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks from offer.

CXXIX. If any such person be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that

Evidence of refusal, &c., to exercise right.

(a) As to what amounts to mistake or inadvertence within the meaning of this section, see *Thomas v. Barry Dock and Railway Company*, 5 T. L. R. 360.

It has been held that the corresponding section of the Lands Clauses Consolidation (Scotland) Act, 1845, does not apply to cases in which the promoters do not, prior to the expiry of the period allowed for compulsory purchase, intend to acquire the omitted estate, right, interest, or charge. *Davidson's Trustees v. Caledonian Railway Company*, 21 Ct. Sess. Cas. (4th series) 1060.

(b) Section 127 is not incorporated with the Public Health Act, 1875. See section 176 of that Act, *ante*, p. 246. As to what are superfluous lands, see *Betts v. Great Eastern Railway Company*, 49 L. J. Ex. 197; 42 L. T. (N.S.) 1; 28 W. R. 50; 44 J. P. 281; *Metropolitan District Railway Company and Cosh, In re*, 13 Ch. D. 607; 49 L. J. Ch. 277; 42 L. T. (N.S.) 73; 28 W. R. 685; 44 J. P. 393; *Hooper v. Bourne*, 5 App. Cas. 1; 49 L. J. Q. B. 370; 42 L. T. (N.S.) 97; 28 W. R. 493; 44 J. P. 327; *London and South-Western Railway Company v. Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. (N.S.) 449; 30 W. R. 620; *Hobbs v. Midland Railway Company*, 20 Ch. D. 418; 51 L. J. Ch. 320; 46 L. T. (N.S.) 270; 30 W. R. 516; *Thackeray and Young's Contract*, 40 Ch. D. 34; *Ray v. Walker* [1892], 2 Q. B. 88; 61 L. J. Q. B. 718.

the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Appendix.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Differences as to price to be settled by arbitration.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him: and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.(c)

Lands to be conveyed to the purchasers.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves, and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

Effect of the word "grant" in conveyances.

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all encumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from encumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors, from all encumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of

Until completion of works, promoters shall make good any deficiency of land tax and poor's rate caused by lands being taken.

(c) The promoters may insert restrictive covenants in the conveyance. *In re Higgins and Hickman*, 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; 46 J. P. 805.

Appendix.

Land tax may be redeemed.

Notices.

Service of notices upon promoters.

Tender of amends.

Payment into court.

Recovery of penalties.

Penalties to be summarily recovered before two justices.

the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.(a)

CXXXIV. And be it enacted, that any summons or notice,(b) or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:—(c)

CXXXVI. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

(a) But the promoters are not liable to be rated. *Mayor of London v. St. Andrew's, Holborn*, L. R. 2 C. P. 574; 30 L. J. M. C. 95; 16 L. T. (N.S.) 665; 15 W. R. 928. As to this section, see *East London Railway Company v. Whitechurch*, L. R. 7 H. L. 81; 43 L. J. M. C. 159; 30 L. T. (N.S.) 412; 22 W. R. 665; 38 J. P. 484. *Stratton v. Metropolitan Board of Works*, L. R. 10 C. P. 76; 44 L. J. M. C. 33; 31 L. T. (N.S.) 673; 23 W. R. 447; 39 J. P. 167. Where the works consisted in making new streets, it was held that the works were completed within the meaning of this section when the streets were fully made, and such of the lands taken as might be liable to assessment had become assessable, and that the deficiency was to be computed from time to time by comparing the assessed value at the time of the special act of the lands taken with the assessed value at the time of computation of such of the lands taken as might have again become assessable. *Governor, &c., of Poor of City of Bristol v. Bristol (Mayor, &c., of)*, 18 Q. B. D. 549; 56 L. J. Q. B. 320; 56 L. T. (N.S.) 641; 35 W. R. 619; 51 J. P. 676. The poor rate referred to in this section includes sums raised for borough rate and county rate, as well as for poor law purposes properly so called. *Flurmer v. London and North Western Railway Company*, 20 Q. B. D. 788; 59 L. T. (N.S.) 542; 36 W. R. 590. Where a company purchased houses beyond the limits of deviation to obtain the withdrawal of opposition by the owners to the passing of the special Act, it was held that the deficiency in the poor rate in respect of the houses must be made good, and that it was immaterial that some of them were unoccupied. *Putney (Overseers of) v. London and South Western Railway Company* [1891], 1 Q. B. 440; 60 L. J. Q. B. 438; 64 L. T. (N.S.) 280; 39 W. R. 291; 55 J. P. 422. For the construction of a similar clause in a local Act, see *Burrup v. London and South Western Railway Company*, 63 L. T. (N.S.) 112. Where the promoters of an undertaking took land and pulled down the houses thereon and were called upon under this section to make good the deficiency in the rates caused by their works, it was held that they were liable to pay the rates according to the full rateable value of the houses and lands taken, notwithstanding the fact that the former owners of some of the houses had made agreements with the rating authority of the district under section 3 of the 32 & 33 Vict. c. 41, to pay the rates instead of the occupiers subject to a deduction of 25 per cent., and that the promoters were not entitled to make a similar deduction. *St. Leonard's, Shoreditch (Vestry of) v. London County Council* [1895], 11 T. L. R. 420; 2 Q. B. 104; 64 L. J. Q. B. 615; 72 L. T. (N.S.) 802; 43 W. R. 598; 59 J. P. 423.

(b) For any purpose, and not only in an action. *In re South Yorkshire, &c., Railway Company*, 18 L. J. Q. B. 333; 7 D. & L. 36; 14 Jur. 1093. But see, as to service of notices on local authorities, the Public Health Act, 1875, ss. 266, 267, *ante*, p. 358.

(c) This part of the Act is printed as it is left unrepealed by the Statute Law Revision Acts, and by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), which substitutes for the repealed sections the corresponding provisions of the Summary Jurisdiction Acts.

CXXXVII. [*Penalties to be levied by distress.*]

Appendix.

CXXXVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained. Distress how to be levied.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish.(d) Application of penalties.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same. Distress against the treasurer.
Notice to treasurer.
Reimbursement of treasurer.

CXLI. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case. Distress not unlawful for want of form, &c.

CXLII. [*Penalties to be sued for within six months. See now the Summary Jurisdiction Act, 1848, s. 11.*]

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.(e) Penalty on witnesses making default.

CXLIV. [*Form of conviction.*]

CXLV. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.(f) Proceedings not to be quashed for want of form, &c.

(d) The remainder of this section was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(e) This section is only repealed so far as relates to any matter to which the Summary Jurisdiction Acts apply (47 & 48 Vict. c. 43).

(f) See the notes to the corresponding section of the Public Health Act, 1875, as to *certiorari*, s. 262, *ante*, p. 350. This section does not apply in cases where acts are done without jurisdiction. See *South Wales Railway Company v. Richards*, 13 L. J. Q. B. 310; *R. v. Edmundson*, 17 Q. B. 67; *Reg. v. London and North-Western Railway Company*, 12 W. R. 208. As to the time within which a *certiorari* will be granted, see *Reg. v. Stewart*, 5 Q. B. D. 179. As to setting aside a verdict on the ground that the jury

Appendix.

Appeal.

Parties allowed to appeal to quarter sessions on giving security.
Court to make such order as they think reasonable.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions. . . .

CXLVII. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the cost, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

CXLVIII. Provided always, . . . that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeiture, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis*; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

Persons giving false evidence liable to penalties of perjury.

CXLIX. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.(a)

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I, _____, of _____, in consideration of the sum of _____ paid to me [or, as the case may be, into the Bank of England] [or Bank of Ireland] in the name and with the privy of the Accountant-General of the Court of Chancery, *ex parte* "the promoters of the undertaking" [naming them], [or to A. B., of _____, and C. D., of _____, two trustees appointed to receive the same], pursuant to the [here name the special Act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description], their successors and assigns all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of or am by the said Act empowered to convey, to hold the

were treated to a champagne luncheon, see *Tanner v. Swindon, &c., Railway Company*, 45 L. T. (N.S.) 209.
(a) The remaining sections of the Act relating to access to the special Act are not incorporated with the Public Health Act, 1875. See section 176, *ante*, p. 246.

In witness whereof I have hereunto set my hand and seal, the _____ day of _____, in the year of our Lord _____.

Form of Conveyance on Chief Rent.

In witness whereof I hereunto set my hand and seal, the _____ day of _____, in the year of our Lord _____.

(8 & 9 VICT. CAP. 20.)(b)

* * * * *

CXL. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly. (d)

CXLI. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application

(b) The following sections of this Act are here set out as being incorporated with the Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 40, and the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 74, *post*. The marginal notes are as printed in the second edition of the Statutes Revised.

(e) This part of the Act is printed as it is left unrepealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), which substitutes for the repealed sections the corresponding provisions of the Summary Jurisdiction Acts. Most of the same sections are again repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

(d) These damages, costs, and expenses are now apparently civil debts within the Summary Jurisdiction Act, 1879, ss. 6, 35, as being sums recoverable on complaint to a court of summary jurisdiction.

Appendix.

Notice to
treasurer.

Reimbursement
of treasurer.

shall issue their or his warrant accordingly ; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence ; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Method of
proceeding
before justices
in questions of
damages, &c.

CXLII. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons ; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses on oath ; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of
penalties.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference ; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed ; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for
defacing boards
used for such
publication.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be
summarily
recovered
before two
justices.

CXLV. Every penalty or forfeiture imposed by this or the special Act or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices.(a)

CXLVI. [*Penalties to be levied by distress.*]

CXLVII. [*Imprisonment in default of distress.*]

Distress, how
to be levied.

CXLVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same ; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not
unlawful for
want of form.

CXLIX. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards com-

(a) The remainder of this section and the whole of the two following sections are repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, and Sched., and again by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

mitted by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case. **Appendix.**

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish.(b) Application of penalties.

CLI. [*Penalties to be sued for within six months.*](c)

CLII. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. Damage to be made good in addition to penalty.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.(d) Penalty on witnesses making default.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender. Transient offenders.

CLV. [*Form of conviction.*](e)

CLVI. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.(f) Proceedings not to be quashed for want of form, &c.

CLVII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions.(g) Appeal. Parties allowed to appeal to quarter sessions on giving security.

CLVIII. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they Court to make such order as they think reasonable.

(b) The remainder of this section relating to extra-parochial places is repealed as obsolete by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(c) This section is repealed by the Summary Jurisdiction Act, 1884 (47 & 49 Vict. 43), s. 4, and Sched., and again by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19). See now the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11.

(d) This section is repealed so far as relates to any matter to which the Summary Jurisdiction Acts apply. 47 & 48 Vict. c. 43.

(e) This section is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, and Sched., and again by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

(f) See the notes to section 262 of the Public Health Act, 1875, *ante*, p. 350.

(g) The remainder of this section is repealed as to England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, and Sched. See now section 6 of that Act, and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31.

Appendix. may confirm or quash the adjudication, and order any money paid by the appellant or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable ; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict. c. 71.

CLIX. Provided always that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis* ; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act ; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Persons giving false evidence liable to penalties of perjury.

CLX. And be it enacted, that every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

THE BATHS AND WASH-HOUSES ACT, 1846.

(9 & 10 VICT. CAP. 74.)(a)

An Act to encourage the Establishment of Public Baths and Wash-houses.

[26th August, 1846.]

Act may be adopted in boroughs and parishes not within boroughs.

This Act may be adopted for any incorporated borough in *England* which is regulated under an Act passed in the sixth year of the reign of His late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also, with the approval of one of Her Majesty's principal Secretaries of State(b) for any parish in *England* not within any such incorporated borough.(c)

Interpretation.

II. In this Act the following words and expressions shall have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction ; (that is to say,)

["*Parish*" shall mean](d)

(a) As to the adoption of this Act and the exercise of the powers conferred by it upon urban authorities, see the Public Health Act, 1875, s. 10, *ante*, p. 28. This Act is amended by 10 & 11 Vict. c. 61 ; 41 & 42 Vict. c. 14 ; and 45 & 46 Vict. c. 30, all of which are set out, *post*. The marginal notes to this Act are printed as in the second edition of the Statutes Revised.

(b) Now the Local Government Board. See 34 & 35 Vict. c. 70, *post*.

(c) But see the Public Health Act, 1875, s. 10, *ante*, p. 28, which gives the urban authority power to adopt and act under the statute to the exclusion of any other authority within their district, and as to rural parishes, see the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7.

(d) The definition of parish was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66). The word parish now includes a place for which a separate poor rate is or can be made, or a separate overseer is or can be appointed. 52 & 53 Vict. c. 63, s. 5, superseding 29 & 30 Vict. c. 113, s. 18. See also 10 & 11 Vict. c. 61, *post*.

Appendix.

"Borough" shall mean city, borough, port, cinque port, or town corporate :

["Ratepayers" :](c)

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens ;

"Overseers" shall mean also any persons authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor :

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry (f) elected under an Act passed in the second year of the reign of His late Majesty, intituled *An Act for the better regulation of vestries and for the appointment of auditors of accounts, in certain parishes of England and Wales*, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry :

1 & 2 Will. 4,
c. 60.

"Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners :

"Clerk" shall mean, as regards an incorporated borough, the town clerk of such borough ; and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners :

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, or place where the matter requiring the cognizance of justices shall arise :

"Lands" shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure :

Words importing the masculine gender shall include the feminine :

Words of the plural number shall include the singular, and words of the singular number shall include the plural.(g)

* * * * *

IV. The income arising from the baths and wash-houses and open bathing places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, to be called "The Public Baths and Wash-houses Account."

Income to be
carried to
borough fund
and separate
accounts kept.

V.(h) Upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish(i) shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given at least seven days before the day to be appointed for holding such vestry ; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal Secretaries of State(k) for his approval, and as soon as such approval shall have been signified in writing under the hand of any such Secretary of State, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish : Provided always, that no such resolution of the vestry shall be deemed to be

Adoption of Act
by vestry of
parish not
within a
borough.

(e) This definition was also repealed by the Statute Law Revision Act, 1875. It is replaced by 10 & 11 Vict. c. 61, *post*.

(f) The Statute Law Revision Act, 1875, repealed the part of this clause which, as originally enacted, contained a reference to 59 Geo. 3, c. 17. See also the amendment of the definition in 10 & 11 Vict. c. 61, s. 2, *post*.

(g) Section 3 authorising councils of boroughs to adopt this Act is repealed by the Statute Law Revision Act, 1875 ; as also is the whole of section 4 except the part set out in the text.

(h) These provisions are not affected with respect to parishes in a rural sanitary district.

(i) The Act is now adopted in rural parishes by the parish meeting, which is convened in manner provided by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 45, sub-sect. (3).

(k) See note (b), *ante*, p. 846.

Appendix.

carried unless at least two-thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution.

Appointment of commissioners for carrying Act into execution.

VI. In such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly, but shall be eligible for immediate re-appointment.

Resignation of commissioners.

VII. Any commissioner may at any time resign his office as a commissioner on giving seven days' notice in writing of his intention to resign to the clerk, and also to the churchwardens.

Vacancies.

VIII. Any vacancies in the commissionership may be filled up by the vestry when and as the vestry shall think fit.

Meetings of commissioners.

IX. The commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified.

Special meetings of commissioners.

X. The commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours' notice, the commissioners for any special purpose named therein, and to meet at such times as shall be therein named.

Quorum of meetings of commissioners.

XI. At all meetings of the commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners.

Commissioners may appoint and remove officers, and pay their salaries and hire an office.

XII. The commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes of proceedings of commissioners.

XIII. All orders and proceedings of the commissioners shall be entered in books, to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

Commissioners to keep accounts.

XIV. The commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Auditors to be appointed yearly who shall examine the accounts and report to vestry.

XV. The vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of *March* in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient

vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.(a) **Appendix.**

XVI. The expenses of carrying this Act into execution in any parish not within any such incorporated borough to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish.(b) Expenses of executing Act to be paid out of the poor rate.

XVII. For defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts. Overseers to levy, as part of the poor rate, such sums as vestry shall deem necessary to pay expenses.

XVIII. The money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or towards defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish.(c) Moneys raised, and the income arising from baths, &c., in the parish to be applied towards defraying expenses. Surplus to be paid to overseers in aid of poor rate.

XIX. The vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner not inconsistent with the provisions of this Act, and for such time as they shall mutually agree; and for that purpose it may, with the approval of such Secretary of State,(d) be agreed on between such vestries that any public baths and wash-houses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses. Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of Secretary of State.

XX. The commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office; by the name of "The Commissioners for Public Baths and Wash-houses in the Parish of () in the County of ()," and by that name may sue and be sued in all courts, and before all Incorporation of commissioners.

(a) These auditors are superseded in urban districts by the Public Health Act, 1875, s. 247 *ante*, p. 326.

(b) Out of the general district rate, when the urban authority are the commissioners. See the Public Health Act, 1875, s. 207, *ante*, p. 276.

(c) To the district fund account in the case mentioned in the last note.

(d) See note (b), *ante*, p. 846.

Appendix. justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Councils, &c., may borrow money for the purposes of the Act with the approval of the Treasury.

XXI. For carrying this Act into execution in any borough or parish respectively, the council, with the approval of the Treasury, (a) and the commissioners, with the sanction of the vestry, and also with the approval of the Treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish, (b) the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly.

The Public Works Loan Commissioners may advance money for the purposes of this Act.

XXII. The commissioners for carrying into execution an Act passed in the second session of the fifth year of the reign of Her Majesty, intituled *An Act to authorise the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor, and to amend the Acts authorising the issue of exchequer bills for the like purposes*, may from time to time make to the . . . commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of . . . the rates for the relief of the poor of the parish . . . (c)

Provisions of 8 & 9 Vict. c. 16, as to borrowing money, accountability of officers, bye-laws, damages, and penalties, incorporated with this Act.

XXIII. The provisions of the Companies Clauses Consolidation Act, 1845, (d) with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable for the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the council, and as regards a parish to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor, aldermen, and burgesses, and as regards a parish under the common seal of the commissioners; and so much of such provisions as are applicable to the "secretary of the company" shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the ratepayers, shall have the privilege of shareholders.

Council may appropriate, with consent of the Treasury, lands vested in the mayor, &c. Commissioners may, with approval of vestry, &c., appropriate lands belonging to parish: council or commissioners may contract for purchase or hire of lands.

XXIV. In any such borough the council, with the approval of the Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen and burgesses; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Commissioners for *England and Wales*, (e) may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others for the general benefit of the parish; and in any such parish the commissioners, with the approval of the vestry, and in any such borough the council, may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish. (f)

(a) The Local Government Board is now substituted for the Commissioners of the Treasury by the Public Health Act, 1875, s. 234, *ante*, p. 316; and see 41 Vict. c. 14, s. 9, *post*.

(b) See further the Public Health Act, 1875, s. 233, *ante*, p. 314.

(c) References in the section to the council of the borough and the borough fund were repealed by the Statute Law Revision Act, 1875. The statute referred to is 5 & 6 Vict. c. 9.

(d) See these provisions, *ante*, p. 79 9.

(e) Now the Local Government Board. See 34 & 35 Vict. c. 70, *post*.

(f) The power conferred by this section to purchase or rents lands is extended to lands in the immediate neighbourhood of the borough or parish by 45 & 46 Vict. c. 30, s. 3, *post*. In urban districts these powers must be exercised by the urban sanitary authority. See the Public Health Act, 1875, s. 10, *ante*, p. 28.

XXV. The council and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buildings suitable for public baths and wash-houses, and as to such washhouses, either with or without open drying grounds, and make any open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Appendix.

Councils and commissioners may erect, &c., public baths and wash-houses and open bathing places.

XXVI. The council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such public baths and wash-houses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act ; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance ; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose : Provided always that no contract above the value or sum of one hundred pounds shall be entered into by the council or the commissioners, for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price.

Councils and commissioners may enter into contracts for the purposes of this Act.

No contract above 100l. to be entered into without notice enabling persons to make tenders.

XXVII. The council of any such borough, and the commissioners, with the approval of the vestry of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any such borough or parish, (g) and appropriate the same to the purposes of this Act with such additions or alterations as they shall respectively deem necessary ; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any such borough or parish (g) by private subscriptions or otherwise may, with the consent of the council of any such borough, or with the consent of the commissioners, and approval of the vestry of any such parish, and with the consent of a majority of the committee or other persons by whom they are appointed trustees, sell or lease the said baths and wash-houses to the said council or commissioners respectively, or make over to them the management of such baths and wash-houses ; and in all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners ; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish. (h)

Council or commissioners may purchase existing baths, &c.

Trustees of baths, &c., empowered to sell or lease them.

XXVIII. Any commissioners of waterworks, trustees of waterworks, water companies, canal companies, gas companies, and other corporations, bodies and persons having the management of any waterworks, canals, reservoirs, wells, springs, and streams of water, and gas works respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and wash-houses and open

Power to water and gas companies to supply water and gas to baths, &c., either without charge or on reduced terms.

(g) Or in the immediate neighbourhood of such borough or parish ; 45 & 46 Vict. c. 30, s. 2.

(h) In an Irish case decided upon 9 & 10 Vict. c. 87, s. 27, which is similar to this clause in the text, it was held by the Lord Chancellor of Ireland, confirming the decision of the M. R., that where a town council contracted to purchase baths and washhouses commenced by a private society on lands held under a sub-lease, being portion of lands comprised in a demise from the owner in fee, so that they were subject to a rent above that in the sub-lease as well as to the covenants and conditions in the original lease, they were not compellable to complete their contract, as it would have been a breach of trust on their part to purchase lands, the interest in which might be lost by the default of others. *Mulholland v. Belfast Corporation*, 9 Ir. Ch. R. 204, 292.



Appendix. bathing places either without charge or on such other favourable terms as they shall think fit.(a)

Councillors and commissioners not to be personally liable,

XXIX. Nothing in this Act contained shall render any member of the council of any borough, or any commissioner personally, or any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of any thing done or suffered in due pursuance of this Act.(b)

Appeals against orders of councils and commissioners,

XXX. Every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty.(c)

Councils, &c., empowered to make sale and exchange of lands with consent of Treasury, &c.,

XXXI. The council, with the approval of the Treasury, and the commissioners appointed under this Act, with the approval of the vestry, and of the Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the commissioners respectively for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly.

When baths, &c., are considered too expensive, they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor rate.

XXXII. Whenever any public baths or wash-houses or open bathing places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the . . . Treasury, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, or burgesses, or the commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish.(d)

Management to be vested in councils and parish commissioners,

XXXIII. The general management, regulation, and control of the public baths and wash-houses and open bathing places established under this Act shall, subject to the provisions of this Act, be as to any borough vested in and exercised by the council, and as to any parish vested in and exercised by the commissioners.(e)

Council, &c., may make bye-laws for regulating the use of baths and wash-houses, &c., and charges thereat.

XXXIV. The bye-laws which the council and commissioners respectively may from time to time make, alter, repeal, and enforce, shall include such bye-laws for the management, use, and regulation of the public baths and wash-houses and open bathing places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing places respectively, as the council and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by any other persons, of any bye-law made by them respectively; and such bye-laws shall make sufficient provision for the several purposes respectively(f) expressed in the Schedule (A.) to this Act: Provided always, that no bye-law made under the authority of this Act

Bye-laws to be approved by

(a) See the Public Health Act, 1875, s. 65, *ante*, p. 91.

(b) See the notes to section 265 of the Public Health Act, 1875, *ante*, p. 352.

(c) See section 23, *ante*, p. 850.

(d) To the district fund account in the case where the authority has been transferred to the urban authority under 21 & 22 Vict. c. 98, s. 47, or the Public Health Act, 1875, s. 10, *ante*, p. 28.

(e) But see now the Public Health Act, 1875, s. 10, *ante*, p. 28.

(f) *Sic* in statute.

shall be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of State.(g)

Appendix.

Secretary of State.

XXXV. A printed copy or sufficient abstract of the bye-laws relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively ; and a printed copy or sufficient abstract of the bye-laws relating to the use of the wash-houses shall be put up in some convenient place near every washing-tub or trough, or every pair of washing-tubs or troughs, in every wash-house.

Copies or abstracts of bye-laws to be hung up in every bath-room, &c.

XXXVI. The number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher class if more than one, in the same building or buildings.(h)

Proportion of baths for the labouring classes.

* * * * *

XXXVIII. For the recovery of the charges at such wash-houses, the officers, servants, and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person.

As to recovery of charges at wash-houses.

XXXIX. If any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of anything done or forborne, or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly, in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of fifty pounds.(i)

Penalty on officers taking fees beyond salaries, or being interested in contracts ;

also on councillors or commissioners taking fees or accepting offices, or being interested in contracts.

XL. Such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit as regards a borough of the borough fund, and as regards a parish of the rate for the relief of the poor thereof.

Application of penalties.

* * * * *

SCHEDULE referred to by the foregoing Act.

SCHEDULE (A.)

Bye-laws to be made in all cases.

For securing that the baths and wash-houses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and wash-houses and open bathing places, and securing against accidents to persons using the open bathing places.

(g) Now the Local Government Board : 34 & 35 Vict. c. 70, *post*. Model bye-laws have been issued by the Local Government Board under this section.

(h) Sections 37 and 41 were repealed by the Statute Law Revision Act, 1875, as also was Schedule (B.) to this Act, as to which see 10 & 11 Vict. c. 61, s. 6, *post*.

(i) See the Public Health Act, 1875, s. 193, *ante*, p. 255. See also as to members of district councils, the provisions of the Local Government Act, 1894, s. 46, *ante*, p. 739, and the Public Bodies Corrupt Practices Act, 1889, *ante*, p. 535.

Appendix.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

In parishes, for regulating the procedure of the commissioners.

THE MARKETS AND FAIRS CLAUSES ACT, 1847.

(10 & 11 VICT. CAP. 14.)(a)

An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating Markets and Fairs. [22nd April, 1847.]

Extent of Act.	This Act shall extend only to such markets or fairs as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act, which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.
Interpretations in this Act :	And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows :—
“Special Act :”	II. The expression “the special Act” used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction or regulation of a market or fair, and with which this Act shall be incorporated ; and the word
“Prescribed :”	“prescribed” used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act ; and the sentence in which such word shall occur shall be construed as if instead of the word “prescribed,” the expression “prescribed for that purpose in the special Act” had been used ; and the expression “the lands” shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof ; and the expression “the undertaking” shall mean the market or fair,(b) and the works connected therewith, by the special Act authorised to be constructed or regulated ; and the expression “the undertakers” shall mean the persons authorised by the special Act to construct or regulate the market or fair.
“The lands :”	
“The undertaking.”	
“Undertakers :”	
Interpretations in this and the special Act.	III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say),(c)
Number :	Words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number :
Gender :	Words importing the masculine gender shall include females.
“Person :”	The word “person” shall include a corporation, whether aggregate or sole :

(a) This Act is incorporated with 38 & 39 Vict. c. 55, by section 167, *ante*, p. 232. The 34 & 35 Vict. c. 12, as affected by section 27 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), enacts that the Secretary of State, on the representation of the district council, or the owner of any *fair* or of the district council, with the consent of the owner of such *fair* or the tolls payable in respect thereof, may order any *fair* to be abolished. His order is to be published in the *London Gazette*, and some local newspaper, and then the fair is to be abolished. By 36 & 37 Vict. c. 37, s. 6, which repealed 31 & 32 Vict. c. 51, he may order the day of holding the fair to be altered. Reference should be made to the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), and to the orders made under it, as affecting markets and fairs.

(b) The Public Health Act, 1875, s. 167, *ante*, p. 232, does not extend to a *fair*. As to what constitutes a fair, see *Collins v. Cooper*, 5 R. 256 ; 68 L. T. 450 ; 57 J. P. 248.

(c) See the Public Health Act, 1875, s. 316, *ante*, p. 410, as to the interpretation of terms in incorporated statutes. Sections 1—5 of this Act are not incorporated, but reference to them may be necessary to explain the terms used in later incorporated sections. They are, therefore, included here.

The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure :	Appendix.
The word "lease" shall include(d) an agreement for a lease :	"Lands :"
The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorised to be constructed or regulated :	"Lease :"
The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods :	"The market or fair :"
The word "driver" shall include the carter or other person having the care of any cart :	"Cart :"
The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine :	"Driver :"
The expression "the collector" shall mean the person appointed by the undertakers to collect the stallages, rents, or tolls authorised by the special Act, and shall include the assistants of the collector :	"Cattle :"
The word "month" shall mean calendar month :	"Collector :"
The expression "superior courts," when the matter submitted to the cognizance of the court arises in <i>England</i> shall mean Her Majesty's superior courts of record at <i>Westminster</i> (d)	"Month :"
The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :	"Superior courts :"
The word "county" shall include riding or other division of a county having a separate commission of the peace(d) and it shall also include county of a city or county of a town :	"Oath :"
The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and if such matter arise in respect of lands situated not wholly in any one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated ; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together.(d)	"County :"

* * * * *

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act ; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof for the county or place in which the market or fair is situate, or for some division of such county having a separate commission of the peace.	"Justice :"
	"Two justices :"

And with respect to citing this Act or any part thereof, be it enacted as follows :—

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."	Citation.
	Short title of this Act.

V. For the purposes of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.	Form in which portions of this Act may be incorporated in other Acts.
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And with respect to the holding of the market or fair, and the protection thereof, be it enacted as follows :—(e)

XII. Before the market or fair shall be opened for public use, the undertakers shall give not less than ten days' notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.	Before the market or fair shall be opened notice to be given by undertakers.
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(d) Words relating to Scotland and Ireland only are here omitted.

(e) These clauses are incorporated by the Public Heath Act, 1875, s. 167, *ante*, p. 232.

Appendix.

Sales elsewhere than in markets prohibited under a penalty not exceeding 40s.

XIII. After the market place is opened for public use, every person other than a licensed pedlar(a) who shall sell or expose for sale in any place within the prescribed limits(b) except in his own dwelling place or shop,(c) any articles in respect

(a) A licensed pedlar who sold potatoes and fruit outside the market, but within the limits, was held to be protected by the provisions, though he had a horse and waggon, and was thus acting rather as a hawker than as a pedlar. *Howard v. Lupton*, L. R. 10 Q. B. 598; 44 L. J. M. C. 150; 40 J. P. 7. But that case was disapproved of, and the contrary held subsequently to the passing of 44 & 45 Vict. c. 45 in the meantime, in *Woolwich Local Board v. Gardiner* [1895], 2 Q. B. 497; 64 L. J. M. C. 248; 73 L. T. (N.S.) 218; 59 J. P. 597. See as to hawkers' licenses, the Hawkers Act, 1888 (51 & 52 Vict. c. 33); see also the Pedlars Acts, 34 & 35 Vict. c. 96, s. 6; and 44 & 45 Vict. c. 45.

The provision in the Hawkers' Act, 1888, that it shall not be necessary for a license to be taken out by any person selling fruit, victuals, or coal, relates only to the Excise license under that Act, and was held not to enable a person to hawk fish in a town subject to a local Act, which contained a provision similar to that in the text, and a further provision enabling the corporation to grant licenses for the sale of marketable commodities in the street. *Openshaw v. Oakley*, 60 L. T. (N.S.) 929; 53 J. P. 740; 16 Cox C. C. 671; 5 T. L. R. 520. Under a similar clause, in a local Act, it was held that a pedlar, who had a pedlar's license, did not require to have a license from the corporation to sell hat-guards in the street, as these were not tollable articles. *Loftos v. Gleave*, 55 J. P. 149. So also where fish were exempt from toll under another Act, a corporation license was held not to be necessary. *Loftos v. Kiggins*, 55 J. P. 151.

(b) As to the prescribed limits, see 38 & 39 Vict. c. 55, s. 316, *ante*, p. 410. In *Caswell v. Cook*, *post*, p. 857, the term was held to mean the limits to which the local Act applied in that case to the boundaries of the borough. A farmer residing at B., ten miles from T., a district under the Public Health Act, contracted at B., with a butcher living in T., to sell some pigs to him, which were to be killed at B., and delivered at T. It was held that no offence was committed within this section. *Bourne v. Lowndes*, 31 L. T. (O.S.) 114; 22 J. P. 354. A sale is not within the section unless the bulk of the goods sold is, at the time of such sale, substantially within the prescribed limits. *Newtownards Town Commissioners v. Woods*, 11 Ir. L. R. Com. L. 506. But a sale by sample, the bulk being within the limits, is within the section. *Londonderry (Mayor of) v. McElhinney*, 9 Ir. R. C. L. 61. As to a sale in a part of a town not in existence at the time of the passing of a local Act, see *Collier v. North*, 35 L. T. (N.S.) 345; 40 J. P. 342. *Killminster v. Fitton*, 53 L. T. (N.S.) 959. H. delivered certain carcases at a door within the limits, and the carcases were then weighed and paid for, but it was alleged that they were delivered in pursuance of a previous contract entered into between the same parties at the same place a week previously. It was held that the sale was within the section. *Exeter (Mayor of) v. Heaman*, 37 L. T. (N.S.) 534; 42 J. P. 503. And where a greengrocer, within the limits, used to order vegetables from B., a farmer outside, and paid for them monthly, it was held that B. was liable to be convicted of selling in a place within the limits other than his own shop. *Torquay Market Company v. Burridge*, 48 J. P. 71. These cases may be distinguished from *Bourne v. Lowndes*, *supra*, on the ground that there the sale was made beyond the limits; but they cannot be reconciled with *Stretch v. White*, 25 J. P. 485, where a farmer living without the limits was held not to offend by sending all his butter from time to time to a shop within the limits, and being allowed the market price for it. But see as to *Stretch v. White*, the observations of the judges in *Pletts v. Campbell* [1895], 2 Q. B. 229; 64 L. J. M. C. 225; 43 W. R. 634; 59 J. P. 502; 15 R. 303; 11 T. L. R. 454. And see *Quilligan v. Imerick Market Trustees*, 14 L. R. Ir. 265. The T. Market Act prohibited the sale within certain limits of corn, grain, fish, meat, poultry, or other provisions, or any bulls, sheep, swine, or other live cattle which was usually sold in public markets. It was held that a shopkeeper selling potatoes came within the statute, these being "provisions," and also "usually sold within markets." *Shepherd v. Folland*, 49 J. P. 165. A cattle salesman was convicted under this section for selling cattle in a yard which he held under lease from the urban authority, containing covenant for quiet enjoyment, the urban authority having established their market after the date of the leases. *Spurling v. Bantoft* [1891], 2 Q. B. 384; 60 L. J. Q. B. 745; 65 L. T. (N.S.) 584; 40 W. R. 157; 56 J. P. 132; 17 Cox C. C. 372.

A local Act imposed tolls on waggons and carts used for the exposure of goods on any market day. A baker, who was not a licensed hawker, had a customer within the limits of the market, whom he supplied with bread three times a week. It was held that he could not be convicted of exposing bread for sale so as to be within the above section. *White v. Yeovil (Mayor, &c., of)*, 61 L. J. M. C. 213.

(c) A vessel moored to a wharf on a canal within the limits is not a shop: *Wiltshire v. Baker*, 11 C. B. (N.S.) 237; 31 L. J. C. P. 10; 10 W. R. 89; 5 L. T. (N.S.) 355. In order to be within the exemption, the shop need not be attached to a dwelling-house; but a sale by auction in a shop attached to and being part of a dwelling-house is privileged. *Wiltshire v. Willett*, 11 C. B. (N.S.) 240; 31 L. J. C. P. 10; 10 W. R. 44; 5 L. T. (N.S.) 355; 26

of which tolls are by the special Act authorised to be taken in the market,^(d) shall for every such offence be liable to a penalty not exceeding forty shillings. Appendix.

J. P. 312. A structure which resembled a booth or stall, having no stable or substantial character, no room for customers within it, nor means of sheltering or protecting goods from the weather or from depredators, was held not to be a shop. *Pope v. Whalley*, 6 B. & S. 303; 11 Jur. (N.S.) 444; 44 L. J. M. C. 76; 13 W. R. 402; 11 L. T. (N.S.) 769; 29 J. P. 134. A sale by auction of horses in a yard attached to a dwelling-house, is not a sale in a shop. *Llandaff and Canton Market Company v. Lyndon*, 8 C. B. (N.S.) 515; 30 L. J. M. C. 105; 8 W. R. 693; 25 J. P. 295; 6 Jur. (N.S.) 1344. A piece of ground outside a dwelling-house, which had been used for many years as the site of a wooden shed in which articles had been sold, was held to be an accessory to the shop, and within this exception. *Ashworth v. Heyworth*, L. R. 4 Q. B. 316; 38 L. J. M. C. 91; 20 L. T. (N.S.) 439; 17 W. R. 668; 10 B. & S. 309; 33 J. P. 565. An agricultural hall with land containing pens and sheds for the sale of cattle and sheep by auction, though adjoining the auctioneer's dwelling-place, was held not to be a shop. *Fearon v. Mitchell*, L. R. 7 Q. B. 690; 41 L. J. M. C. 170; 27 L. T. (N.S.) 33; 36 J. P. 804; *McHole v. Davies*, 1 Q. B. D. 59; 45 L. J. M. C. 30; 33 L. T. (N.S.) 502; 24 W. R. 343; 40 J. P. 548. A sale in a skittle-ground let for two days for the occasion was held not to be a sale in a shop. *Hooper v. Kenshole*, 2 Q. B. D. 127; 46 L. J. M. C. 160; 36 L. T. (N.S.) 111; 25 W. R. 368; 41 J. P. 182; and see also *Perkins v. Arber*, 37 J. P. 406. A sale of marketable commodities from carts and vans standing in the street opposite a shop is not a sale in the shop. *Horner v. Freeman*, W. N. (1884), p. 223.

Commissioners were, by a local Act incorporating this Act, empowered to set up a market and take toll. Section 47 of the local Act imposed tolls upon all persons selling marketable commodities, except on premises in their own occupation. An auctioneer held sales in a field in his own occupation, and it was held that he was not liable for penalties. *Rutherford v. Straker*, 42 Ch. D. 85n. It was further held that he could not be sued for disturbance of the market. *Abergavenny Improvement Commissioners v. Straker*, 42 Ch. D. 83; 58 L. J. Ch. 717; 60 L. T. (N.S.) 756; 38 W. R. 158.

There may be a right by custom to exclude persons from selling marketable articles in shops on market days. See *Manchester (Mayor of) v. Pedley*, 4 B. & Ad. 397; *Shepherd v. Folland*, *supra*; but the grant of a market, with all liberties and free customs to such market belonging, does not imply such a right. *Penryn (Mayor of) v. Best*, 3 Ex. D. 222; 48 L. J. Ex. 103; 31 L. T. (N.S.) 805; 27 W. R. 126; 42 J. P. 629. A local Act stated that for preventing encroachments on the markets any person who shall sell, among other things, roots, fruit, or garden stuff in any other places within the town than in the market should be liable to a penalty. A. bought vegetables from a dealer in the market, and then offered them for sale in the streets of the town:—Held, that he had incurred the penalty. *Black v. Sackett*, 10 B. & S. 639.

As to what amounts to disturbance of a market, see *Prince v. Lewis*, 5 B. & C. 363; *In re Islington Market v. Bell*, 3 C. & F. 513; *Holeroff v. Heel*, 1 B. & P. 400; *Mosley v. Chadwick*, 7 B. & C. 47 (n); *De Rutzen v. Lloyd*, 5 A. & E. 456; *Breeon (Mayor of) v. Edwards*, 1 H. & C. 51; 8 Jur. (N.S.) 461; 31 L. J. Ex. 368; 6 L. T. (N.S.) 293; 36 J. P. 614; *Dorchester (Mayor of) v. Ensor*, L. R. 4 Ex. 335; 39 L. J. Ex. 11; 21 L. T. (N.S.) 145; 34 J. P. 167; *London (Mayor of) v. Low*, 49 L. J. Q. B. 144; 28 W. R. 250; 43 J. P. 764; *Elwes v. Payne*, 12 Ch. D. 468; 48 L. J. Ch. 831; 41 L. T. (N.S.) 118; 28 W. R. 234; *Manchester (Mayor of) v. Lyons*, 22 Ch. D. 287; 47 L. T. (N.S.) 677; *Great Eastern Railway Company v. Goldsmid*, 9 App. Cas. 927; 54 L. J. Ch. 162; 52 L. T. (N.S.) 270; 33 W. R. 81; 49 J. P. 270. See also the cases cited in the notes to section 166 of the Public Health Act, 1875, *ante*, p. 229.

(d) Where a local Act imposed a toll upon the shops or stalls in the market, and not on the commodities sold there, it was held that a person who sold fruit and fish which were marketable commodities, from door to door within the prescribed limits, was not liable under this section. *Caswell v. Cook*, 11 C. B. (N.S.) 637; 31 L. J. M. C. 185; 27 J. P. 183. A horse is an article within this section. *Llandaff and Canton Market Company v. Lyndon*, *supra*. And see *Shepherd v. Folland*, *supra*.

A market Act provided that no person should sell or expose for sale in a certain district, except in the market place, any provisions or other goods mentioned in the schedule. The schedule, among other things, contained this item: "For every stallion exposed to view, one shilling." It was held that the Act did not so incorporate the words of the schedule as to make it an offence to expose to view a stallion within the district, for it applied only to exposing for sale. *Luke v. Charles*, 25 J. P. 148.

It is to be observed that the section does not enable a person to sell elsewhere than in the market or in a shop on payment of the tolls. Sometimes in local Acts, however, there is provision for selling in the streets, &c., upon obtaining a license or on paying the prescribed tolls. See *Carter v. Parkhouse*, 22 L. T. (N.S.) 788; 34 J. P. 438.

As to what are marketable commodities within the provisions of a local Act, see *Morgan v. Kingdon*, 39 J. P. 471.

Appendix.**Market days.**

XIV. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days as the undertakers shall appoint from time to time by any bye-law to be made in pursuance of this or the special Act.(a)

Penalty for selling or exposing for sale unwholesome meat, &c.

XV. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding five pounds for any such offence ; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice ; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding five pounds for every such offence.(b)

Penalty on obstructing inspector.

Penalty for obstructing market or fair keeper.

XVI. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding forty shillings.

Slaughter-houses.

And with respect to slaughter-houses, be it enacted as follows :—

* * * * *

Inspector may enter and inspect slaughter-houses.

XX. The inspector of provisions, or any officer appointed by the undertakers for that purpose, may at all times of the day, with or without assistants, enter into and inspect all buildings erected or set apart by the undertakers for slaughtering cattle, and examine whether any cattle or the carcase of any cattle is deposited there ; and in case such officer shall find any cattle, or the carcase or part of the carcase of any such cattle, which shall appear unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons ; and in case upon such inspection and examination such cattle, carcase or part of a carcase, shall be found unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man ; and every person who shall obstruct or hinder such inspector or other officer in the discharge of any of the duties aforesaid shall be liable to a penalty not exceeding five pounds for every such offence.(c)

And with respect to weighing goods and carts, be it enacted as follows :—(d)

Undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs.

XXI. The undertakers shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.(e)

Articles to be weighed if

XXII. Every person selling or offering for sale any articles in the market or fair

(a) See section 42, *post*. The owner of a market may remove not only the whole, but a part of it, from one place to another within the compass of his district. *Worthy v. Nottingham Local Board*, 2 L. T. (N.S.) 582. And see *Edinburgh Magistrates v. Blackie* 11 App. Cas. 665.

A bye-law that no auctioneer should sell cattle by auction in the market before twelve o'clock on the market day was held to be valid. *Collins v. Wells (Corporation of)*, 1 T. L. R. 328.

(b) See the provisions of the Public Health Act, 1875, ss. 116—119, *ante*, pp. 136—140, as to unsound meat, &c. See also section 20, *post*, as to cattle, &c., seized in a slaughter-house, and sections 121—135 of 10 & 11 Vict. c. 34, *post*.

(c) This section is not incorporated in the Public Health Act, 1875, but is inserted as being referred to in section 15, *ante*.

(d) Incorporated by the Public Health Act, 1875, s. 167, *ante*, p. 232. As to the purchase, adjusting, and testing of these weighing machines, see 22 & 23 Vict. c. 56, ss. 6, 7, 8, 12, re-enacted by the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), Schedule VI., Part 2, and the Weights and Measures Act, 1889 (52 & 53 Vict. c. 58).

(e) See also 41 & 42 Vict. c. 49, Schedule VI., Part 2, re-enacting 22 & 23 Vict. c. 56, ss. 6, 7, 8, and 12.

shall, if required to do so by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers ; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty not exceeding forty shillings.

Appendix.

requested by the buyer.
Penalty for refusal,

XXIII. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty not exceeding forty shillings.(e)

Penalty on persons appointed refusing to weigh.

XXIV. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts with or without loading, as may be required.

Undertakers to keep proper machines for weighing carts laden with goods.

XXV. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed ; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be reweighed without such load ; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half mile, and a like sum for every additional half mile ; and such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

Carts to be weighed at one of the machines erected by the undertakers.

XXVI. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as hereinbefore directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding twenty shillings.

Penalty on drivers for refusing to take carts to be weighed, &c.

XXVII. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty not exceeding five pounds for each offence ; (that is to say,)

Penalties on drivers of carts, &c., committing frauds in weighing.

If he at the time of weighing any such cart shall knowingly have anything in or about the same other than the proper loading thereof :

If he alter any ticket denoting the weight of any such cart or the loading of the same :

If he make or use, or be privy to making or using any ticket falsely stating the weight of any such cart or the loading thereof :

If he, after the weighing of any such cart with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket :

If he, between the time when the cart and the loading thereof have been so weighed, and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof :

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

XXVIII. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on buyers or sellers for committing frauds in weighing.

XXIX. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding five pounds in any of the following cases ; (that is to say,)

Penalties for frauds committed by the machine keeper.

Appendix.

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed :

If he do not fairly weigh every such cart, with or without loading, as the case may be :

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required :

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof :

If he weigh any cart with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively :

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

Penalty on other parties committing frauds as to weighing.

XXX. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds.

And with respect to the stallages, rents, and tolls to be taken by the undertakers be it enacted as follows :—(a)

Tolls, &c., not to be demanded until market or fair completed.

XXXI. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage, rent, or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto.

Certificate of two justices to be evidence that market or fair is completed.

XXXII. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid ; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed and fit for public use.

Stallages, &c., when to be paid.

XXXIII. The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time, on demand, to the undertakers or the collector, or other person authorised by the undertakers to receive the same.

Tolls to be paid to persons authorised before the same are weighed, &c.

XXXIV. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorised by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured.

Tolls in respect of cattle market when due.

XXXV. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable are brought into the market place, and before the cattle are put into any pen, or tied up in such market place ; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed.

Stallages, tolls, &c., may be varied from time to time.

XXXVI.(b) The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair, or for the slaughter-houses, or

(a) Incorporated with 38 & 39 Vict. c. 55, by section 167, *ante*, p. 232. No tolls are leviable by the urban authority unless, as regards such as were established between 1858 and 1872, they were approved of by the Secretary of State ; and as regards such as have been or shall be approved of by the Local Government Board, see 21 & 22 Vict. c. 98, s. 50 ; 34 & 35 Vict. c. 70 ; and 38 & 39 Vict. c. 55, s. 167, *ante*. The tolls therein referred to are interpreted by the Board to be tolls on buying and selling. They have no power to approve of stallages, rents, or pickage tolls under the section last mentioned.

As to the return of tolls which must be made under the Local Taxation Returns Act, see the Act, *post* (23 & 24 Vict. c. 51).

(b) Section 36 to 41 (both included) are applied to tolls for weighing cattle by section 8 of the Markets and Fairs (Weighing of Cattle) Act, 1887, 50 & 51 Vict. c. 27, *post*.

for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorized by the special Act. **Appendix.**

XXXVII. Every person who shall demand or receive a greater toll than that authorized to be taken under the provisions of this or the special Act shall for every such offence be liable to a penalty not exceeding forty shillings. Penalty on taking a greater toll than authorised by this or the special Act.

XXXVIII. If any person liable to the payment of any stallage, rent, or toll authorized by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorized by the undertakers or their lessee to collect the same, may levy the same in *England* by distress of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any court having competent jurisdiction.(c) Recovery of tolls by distress, &c.

XXXIX. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in *England* by a justice, and such justice shall, on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; and in default of payment, on demand of the money which shall be so awarded, and of the costs, the same shall be forthwith levied in *England* by distress, and the justice shall issue his warrant accordingly.(c) Disputes respecting tolls, how to be settled.

XL. Every person who shall assault or obstruct any person authorized to collect any stallage, rent, or toll authorized by this or the special Act, shall for every such offence be liable to a penalty not exceeding forty shillings. Penalty for obstructing collector of rents, &c.

XLI. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing-house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: Provided always that if such list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act. List of tolls, &c., to be set up and placed in conspicuous places.

And with respect to the bye-laws to be made by the undertakers, be it enacted as follows:—(d)

XLII. The undertakers may from time to time make such bye-laws as they think fit for all or any of the following purposes: (that is to say,) Bye-laws may be made for all or any of the purposes herein named.
For regulating the use of the market place and fair and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

(c) Words relating to Ireland and Scotland are omitted from this section.

(d) The Public Health Act, 1875, s. 167, *ante*, p. 232, provides that an urban authority may make bye-laws for any of the purposes mentioned in the above section. These bye-laws will be made under the Public Health Act, and the remaining sections of this Act as to bye-laws need not therefore be referred to. Model bye-laws under this section have been issued by the Local Government Board.

A bye-law made by a local board prevented persons from throwing skins upon any part of the ground occupied by the market, or the immediate approaches, or in any cart standing thereon, without being authorized so to do by the superintendent of the market. This was held to be too general, and therefore bad, as in restraint of trade. *Worthy v. Nottingham Local Board*, 21 L. T. (N.S.) 582. A bye-law that no auctioneer should sell cattle by auction in the market before 12 o'clock on the market day was held to be valid. *Collins v. Wells (Corporation of)*, 1 T. L. R. 328. A bye-law made under a local Act for regulating markets was held not to be unreasonable or in restraint of trade by reason of its setting apart a part of a market for sale by wholesale only, and providing a penalty for selling by retail in that part. *Strike v. Collins*, 55 L. T. (N.S.) 182; 34 W. R. 459; 50 J. P. 741.

As to the confirmation of bye-laws made under this section, see 47 Vict. c. 12, *ante*, p. 474.

Appendix.

- For fixing the days, and the hours during each day, on which the market or fair shall be held :
- For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein :
- For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act :
- For regulating the use of the weighing machines provided by the undertakers, and preventing the use of false or defective weights, scales, or measures :
- For preventing the sale or exposure for sale of unwholesome provisions in the market or fair.

THE GASWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. CAP. 15.)*(a)*

An Act for consolidating in one Act certain provisions usually contained in Acts authorizing the making of Gasworks for supplying Towns with Gas.

[23rd April, 1847.]

Incorporation
with special
Act.

This Act shall extend only to such gasworks as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.*(b)*

Interpretation.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows :—

“The special
Act :”

II. The expression “the special Act,” used in this Act, shall be construed to mean any Act which shall be hereafter passed authorizing the construction of gasworks, and with which this Act shall be so incorporated as aforesaid ; and the word “prescribed,” used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special Act” had been used ; and the expression “the lands” shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof ; and the expression “the undertaking” shall mean the gasworks and the works connected therewith by the special Act authorized to be constructed ; and the expression “the undertakers” shall mean the persons by the special Act authorized to construct the gasworks.

“Prescribed :”

“The lands :”

“The under-
taking :”

“The under-
takers :”

Interpretations.

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Number :

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number :

(a) The Public Health Act, 1875, s. 161, *ante*, p. 224, enables an urban authority to obtain a provisional order authorizing a gas undertaking under the Gas and Waterworks Facilities Act, 1870 (33 & 34 Vict. c. 70), and any Act amending the same (36 & 37 Vict. c. 89). These Acts, which are set out, *post*, incorporate this Act, and in consequence the Amending Act of 1871 (34 & 35 Vict. c. 41), both of which are, therefore, included in this Appendix. The marginal notes to this Act are as printed in the second edition of the Statutes Revised.

(b) As to the limits of supply, see *Gas Light Company v. South Metropolitan Gas Company*, 62 L. T. (N.S.) 126 ; 54 J. P. 373 ; 5 T. L. R. 731, the facts of which are set out, *ante*, p. 224,

Words importing the masculine gender shall include females :

The word "person" shall include corporation, whether aggregate or sole :

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure :

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act :(c)

The expression "the gasworks" shall mean the gasworks and the works connected therewith by the special Act authorised to be constructed :

The expression "gas rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of gas :

The word "month" shall mean calendar month :

The expression "superior courts," where the matter submitted to the cognizance of the superior courts arises in *England* shall mean Her Majesty's superior courts of record at *Westminster* (d)

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

The word "county" shall include riding or other division of a county having a separate commission of the peace . . . (d) and it shall also include county of a city or county of a town :

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together :(d)

* * * * *

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act ; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace.

And with respect to citing this Act or any part thereof, be it enacted as follows :—

IV. In citing this Act in other Acts of Parliament and in legal instruments, it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act ; and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows :—(e)

VI. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or

Appendix.

Gender :

"Person :"

"Lands :"

"Street :"

"The gas-

works :"

"Gas rate :"

"Month :"

"Superior

courts :"

"Oath :"

"County :"

"Justice :"

"Two Justices :"

"Quarter

sessions :"

"Citing the Act.

Short title of

this Act.

Incorporation of

parts of this

Act with other

Acts.

Laying of pipes.

Power to break

up streets, &c.,

under superin-

tendence, and

(c) This definition was held not to include an open tract of land above mean high water-mark, which belonged to the owner of enclosed land fronting the shore. It appeared that the inhabitants of two villages on the shore had always gone to and fro between them along the shore, and at high water passed over this land as they chose, but by no defined track. *Maddock v. Wallasey Local Board*, 55 L. J. Q. B. 267 ; 50 J. P. 404.

(d) Words relating to Scotland and Ireland only are here omitted.

(e) See on this subject the cases cited in the notes to the Public Health Act, 1875, s. 149, ante, p. 169. As to the liability of the company for an accident caused while breaking up a pavement, see *Hornby v. Liverpool United Gas Company*, 47 J. P. 231. As to what is a street, see *Maddock v. Wallasey Local Board*, *supra*.

Appendix.

to open drains,
and to lay pipes,
make, sewers,
erect lamps, &c.

tunnels within or under such streets and bridges, and lay down and place within the same limits, pipes, conduits, service pipes, and other works,(a) and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be(b) in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Undertakers not
to enter on
private land
without consent.

VII. Provided always, that nothing herein shall authorize or empower the undertakers to lay down or place any pipe or other works into, through, or against any building, or in any land, not dedicated to public use, without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down.(c)

Notice to be
served on
persons having
control, &c.,
before breaking
up streets or
opening drains. !

VIII. Before the undertakers proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.(d)

Streets or drains
not to be broken
up except under
superintendence
of persons
having control
of the same.

IX. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertaker's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

Streets, &c.,
broken up to be
reinstated with-
out delay.

X. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete

(a) A corporation, empowered to supply gas within a township, of which the local board, as undertakers within the meaning of this section, had the exclusive right of laying gas mains therein and was compelled to repair them and to allow the corporation to use them, has a mere easement in the mains and is not liable to be rated in respect of them. *Southport (Mayor, &c., of) v. Ormskirk Assessment Committee* [1894], 1 Q. B. 196; 63 L. J. Q. B. 250; 69 L. T. (N.S.) 852; 42 W. R. 153; 58 J. P. 212.

(b) As to this phrase, see *R. v. East and West India Docks*, 2 E. & B. 466; 22 L. J. Q. B. 380.

(c) As to breaking up occupation roads not dedicated to the public, see *Selby v. Crystal Palace District Gas Company*, 31 L. J. Ch. 595. Arches in a roadway occupied as cellars are buildings. *Thompson v. Sunderland Gas Company*, 2 Ex. D. 429; 46 L. J. Ex. 710; 37 L. T. (N.S.) 30; 25 W. R. 809; 42 J. P. 198.

(d) Consent is not necessary. *Dover Gaslight Company v. Dover (Mayor, &c., of)*, 1 Jur. (N.S.) 212. As to what notice must be given, see *Edgware Highway Board v. Colne Valley Railway Company*, 46 L. J. Ch. 889. As to the right of support of pipes laid in a highway, see *Normanton Gas Company v. Pope*, 52 L. J. Q. B. 629; 49 L. T. (N.S.) 748; 32 W. R. 134.

the work for which the same shall be broken up, and fill in the ground, and re-instate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Appendix.

Roads, &c., to be fenced and lighted while opened ;

and to be kept in repair for a certain time afterwards.

XI. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the undertakers are hereby authorised to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work or in filling in the ground, or re-instating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made, a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

Penalty for delay in re-instating streets, &c.

XII. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers ; and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

In case of delay persons having control of streets, &c., may re-instate them.

And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows :—

Supply of gas.

XIII. The undertakers may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof ; and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such commissioners, trustees, or persons with lamps, lamp-posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, or other persons.(e)

Power of the undertakers to contract for lighting streets, &c.

XVI. If any person supplied with gas by virtue of this or the special Act, neglect to pay the rent due for the same to the undertakers, the undertakers may stop the gas from entering the premises of such person, by cutting off the service-pipe, or by such means as the undertakers shall think fit.(f)

If rent is not paid, gas may be cut off and rent and expenses recovered.

* * * * *

(e) See the Public Health Act, 1875, s. 161, *ante*, p. 224. Sections 14 and 15 of this Act are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), except in so far as incorporated with the special Acts to which 34 & 35 Vict. c. 41, does not apply. Section 14 related to the exemption of gas fittings from distress, as to which see *Gaslight and Coke Company v. Hardy*, 17 Q. B. D. 619 ; 56 L. J. Q. B. 168 ; 55 L. T. (N.S.) 585 ; 35 W. R. 50 ; 51 J. P. 6.

(f) The remainder of this section was repealed by the Statute Law Revision Act, 1875, as also was section 17, except in so far as incorporated with special Acts to which 34 & 35 Vict. c. 41, does not apply.

Appendix.

And with respect to waste or misuse of the gas, or injury to the pipes and other works, be it enacted as follows:—

Undue use of gas.

Penalty for fraudulently using the gas of the undertakers.

XVIII. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas, or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pounds for every such offence, and also the sum of forty shillings for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the undertakers may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.(a)

Penalty for wilfully removing or damaging pipes, &c.

XIX. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

Satisfaction for accidentally damaging pipes, &c.

XX. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the undertakers for the damage done, not exceeding five pounds, as any two justices or the sheriff shall think reasonable.(b)

Nuisance from gas.

And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows:—(c)

Penalty on undertakers allowing washings, &c., produced in making gas to flow into streams, reservoirs, &c.

XXI. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior court within six months.

XXII. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled,

The payment due to a gas company for gas supplied, though called a rent, is not really a rent, and consequently a gas company does not come within the words "or other person to whom any rent is due" in section 34 of the Bankruptcy Act, 1869. *Ex parte Harrison, Re Peake*, 13 Q. B. D. 753; 53 L. J. Ch. 977; 51 L. T. (N.S.) 878.

(a) As to larceny of gas, see *Reg. v. White*, 22 L. J. M. C. 123; *Dears. C. C.* 203; 3 C. & K. 363; 6 Cox, C. C. 213; 17 Jur. 536; *Reg. v. Foster*, L. R. 1 C. C. R. 172. As to the operation of the Statute of Limitations, when there has been a fraudulent concealment of an improper using of gas within this section, see *Imperial Gaslight and Coke Company v. London Gaslight Company*, 23 L. J. Ex. 303. The appellants, on their own premises, substituted for part of a gaspipe belonging to the respondents a larger pipe, in order to increase their supply, without having first obtained the respondent's consent, though notice under 34 & 35 Vict. c. 41, s. 15, *post*, to disconnect the pipe from the meter was duly given. There was no proof of any fraud, waste, or misuse of the gas. It was held that the appellants had committed an offence under the above section. *Morrison, Wood and Co. v. West Ham Gas Company*, 52 L. T. (N.S.) 817; 33 W. R. 799; 49 J. P. 662.

(b) Under this section a master is not liable for damages to a lamp caused accidentally by his servant. *Harding v. Barker*, 37 W. R. 78; 53 J. P. 308; 5 T. L. R. 42.

(c) See also the provisions of the Public Health Act, 1875, s. 68, *ante*, p. 94, and the notes thereon; the Waterworks Clauses Act, 1847, ss. 61—67, *post*; and the Rivers Pollution Prevention Act, 1875, *post*. As to the liability of a gas company for damage caused by an escape of gas, see *Jones v. Carshalton Gas Company*, 5 T. L. R. 69; *Burrows v. March Gas and Coke Company*, *post*, p. 867.

by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.(d)

Appendix.

XXIII. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during the continuance of the offence.

XXIV. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof, in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice.(e)

Daily penalty during escape of gas after notice.

XXV. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Penalty for fouling water by gas.

XXVI. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers, the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours' notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes.

Power to open ground and examine gas pipes to ascertain whether water is fouled by gas.

Ground, &c., to be reinstated.

XXVII. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination.

Expenses to abide result of examination.

XXVIII. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers shall, in case of any dispute about the same, together with the cost of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered.

How expenses shall be ascertained and recovered.

XXIX. Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas.(f)

Nothing to exempt undertakers from being indicted for a nuisance.

(d) As to the effect of this section on a local Act, see *Parry v. Croydon Commercial Gas Company*, 15 C. B. (N.S.) 568; 28 J. P. 86.

(e) See *Moss v. Hastings and St. Leonards Gas Company*, 4 F. & F. 324; *Burrows v. March Gas and Coke Company*, L. R. 7 Ex. 96; 41 L. J. Ex. 46; 36 J. P. 517.

(f) See the Public Health Act, 1875, ss. 91—111, *ante*, pp. 108—130, as to the proceedings in respect of a nuisance. A company cannot justify a nuisance by setting up incapacity to

Appendix.

Profits of the undertakers.

Profits of the undertakers limited.

If profits exceed the amount limited, excess to be invested and form a reserved fund.

Reserved fund not to be resorted to unless to meet an extraordinary claim except on certificate.

When fund amounts to prescribed sum, interest to be applied to purposes of the undertaking.

If profits are less than the prescribed rate, deficiency may be supplied from the reserved fund.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of gas.

And with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, be it enacted as follows :—

XXX. The profits of the undertaking to be divided amongst the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate.

XXXI. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities ; and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one-tenth of the nominal capital of the undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers ; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

XXXII. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in *England* by two justices that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act.(a)

XXXIII. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.(b)

XXXIV. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

XXXV. In *England* the court of quarter sessions may, on the petition of any two gas ratepayers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers (the amount of such expense to be determined by the said court . . .), the actual state and condition of the concerns of the undertakers, and to make report thereof to the said court at the then present or some following sessions ;

make or supply gas without so doing. *Attorney-General v. Gaslight and Coke Company*, 7 Ch. D. 217 ; 47 L. J. Ch. 534 ; 37 L. T. (N.S.) 746 ; 26 W. R. 125. But compare with this the decision in *Harrison v. Southwark and Vauxhall Waterworks Company* [1891], 2 Ch. 409 ; 60 L. J. Ch. 630 ; 64 L. T. (N.S.) 864, where it was held that a statutory authority to sink a shaft included all things reasonably necessary, though causing a temporary nuisance.

(a) Words relating to Scotland and Ireland only are here omitted.

(b) Certain consumers of gas brought an action against the company which supplied them on the ground that the company had created a reserve fund greatly in excess of that authorised by its special Acts, and had carried over from year to year large undivided profits, thereby avoiding the obligation upon it to reduce the price of the gas which it so supplied :—Held, that no such duty as alleged was imposed by the Acts on the company ; that the consumers had no control over the affairs of the company, and were not, therefore, entitled to raise the question, the shareholders alone being interested, and that the court could not order the reserve fund and undivided profits to be applied in reduction of the price of the gas in the manner suggested. *Mason v. Ashton Gas Company*, 54 L. T. (N.S.) 708 ; 50 J. P. 628,

and the said court may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to ; and if it thereupon appear to the said court that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate.(d)

Appendix.
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XXXVI. Provided always, that if, in the case of any petition so presented, it appear to the said court that there was no sufficient ground for presenting the same, the said court may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

Court may order petitioner to pay costs of groundless petition.

XXXVII. If the undertakers shall, for seven days after being required to produce to the said court, or to the said accountant or other person as aforesaid, any books of account or other books, bills, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days, such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior courts.

Penalty on undertakers for refusing to produce books, vouchers, &c.

XXXVIII. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any ; and a copy of such annual account, if the gasworks be situated in *England* shall be transmitted, free of charge, to the clerk of the peace for the county in which the gasworks are situate and such transmission shall be made on or before the thirty-first day of *January* in each year, under a penalty of twenty pounds for each default ; and the copy of such account so sent to the said clerk of the peace shall be kept by him, and shall be open to inspection by all persons at all reasonable hours, on payment of one shilling for each inspection.(e)

Account.

Annual account to be made up by undertakers.

(d) Words relating to Scotland and Ireland only are omitted from this and the two following sections. The Court of Quarter Sessions has no jurisdiction under this section to appoint a gas engineer to assist an accountant appointed thereunder to examine and ascertain the actual state and condition of the concerns of the gas company, and where such order is made a writ of *certiorari* will lie to bring the order up to be quashed. *Reg. v. Brindley*, 54 L. T. (N.S.) 435 ; 50 J. P. 534.

An order cannot be made to reduce the price of gas under this section unless the whole of the reserve fund has been invested and the prescribed dividend paid ; nor can an order be made for the payment of costs by the company to the petitioners. The quarter sessions may inquire into the accounts of past years for the purpose of ascertaining the actual condition of the concern, but they cannot disallow and recast them so as to vary the accounts of the year into which they are inquiring. *Reg. v. Hanley (Recorder of)*, 19 Q. B. D. 481 ; 56 L. J. M. C. 125 ; 57 L. T. (N.S.) 444 ; 36 W. R. 222 ; 52 J. P. 100. Where a corporation supply gas they are not bound to give credit for the value of gas supplied for lighting streets or other public purposes. *Attorney-General v. Oldham (Mayor, &c., of)*, Court of Appeal, 5th April, 1892.

(e) Words relating to Scotland and Ireland only are omitted from this section. A return must also be sent to the local authority under 34 & 35 Vict. c. 41, s. 35, *post*. As to the annual account under a local Act, see *Leamington Priors Gas Company v. Davis*, 18 Q. B. D. 107 ; 56 L. J. M. C. 14 ; 55 L. T. (N.S.) 734 ; 35 W. R. 123 ; 51 J. P. 360, the facts of which are stated in the note to 34 & 35 Vict. c. 41, s. 35, *post*.

Appendix. XXXIX.(a)

Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows :

Railways Clauses Acts, as to damages, &c., to be incorporated with this and the special Act.

XL. If the gasworks be in *England* the clauses of the Railways Clauses Consolidation Act, 1845,(b) with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices shall be incorporated with this and the special Act.(c) . . . , .

XLI.(d)

Acts which may be done by one magistrate.

XLII. All things herein, or in the special Act or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done in *England* by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.(c)

Penalties, &c., within metropolitan police district. 2 & 3 Vict. c. 71.

XLIII. Every penalty or forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis*; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined; and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Appeal, &c.

Persons giving false evidence liable to penalties of perjury.

XLIV. Every person, who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to special Act.

And with respect to access to the special Act, be it enacted as follows :—

Copies of special Act.

XLV. The undertakers shall at all times, after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace in *England* of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said clerk of the peace shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled *An Act to compel Clerks of the Peace for Counties, and other Persons, to take*

7 Will. 4 and 1 Vict. c. 83.

(a) Section 39 as to tender of amends was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See now the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), *ante*, p. 692.
(b) See *ante*, p. 843.
(c) The parts of this section relating to Scotland and Ireland only are here omitted.
(d) Section 41 related only to Ireland, and was repealed by the Statute Law Revision Act, 1875.

the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.(e) **Appendix.**

XLVI. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. Penalty on undertakers failing to keep or deposit such copies.

XLVII. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of His late Majesty King George the Third, intituled *An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein*,^(f) or from the laws of sewers for the time being in force within ten miles from the *Royal Exchange* in the city of *London*. Saving as to 57 Geo. 3, c. xxix., &c.

XLVIII. . . . Nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to Her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of Her Majesty in right of Her Crown, or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of Her Majesty, in any part of the United Kingdom of *Great Britain and Ireland*. Saving as to the rights of the Crown.

XLIX. . . . Nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament. Saving as to future Acts.

* * * * *

THE WATERWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. CAP. 17.)^(g)

An Act for consolidating in One Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water.

[23rd April, 1847.]

This Act shall extend only to such waterworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act. Incorporation with special Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows :— Interpretation.

II. The expression “the special Act,” used in this Act, shall be construed to mean “The Special any Act which shall be hereafter passed authorising the construction of waterworks, Act;” and with which this Act shall be incorporated; and the word “prescribed,” used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special Act” had been used; and the expression “the lands and streams” shall mean the lands and streams “The lands and streams :”

(e) This Act is now called the Parliamentary Documents Deposit Act, 1837. Words in this section relating to Scotland and Ireland only are omitted.

(f) Now called the General Paving (Metropolis) Act, 1817, but better known as Michael Angelo Taylor's Act.

(g) Incorporated by the Public Health Act, 1875, s. 57, *ante*, p. 83 (together with the amending Act of 1883, 46 & 47 Vict. c. 93, *post*), and also by the Public Health (Support of Sewers) Act, 1883, *ante*, p. 469. The marginal notes to this Act are as printed in the second edition of the Statutes Revised.

Appendix.

"The undertaking ;"
 "The undertakers ;"

of water which shall by the special Act be authorised to be taken or used for the purposes thereof ; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed ; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks.

Interpretations
 in this and the
 special Act :

III. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Number :	Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number :
Gender :	Words importing the masculine gender shall include females :
"Person ;"	The word "person" shall include a corporation, whether aggregate or sole :
"Lands ;"	The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure :
"Streams ;"	The word "streams" shall include springs, brooks, rivers, and other running waters :
"Street ;"	The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act : (a)
"The waterworks ;"	The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed :
"Water rate ;"	The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water :
"Month ;"	The word "month" shall mean calendar month :
"Superior courts ;"	The expression "superior courts," where the matter submitted to the cognizance of the court arises in <i>England</i> shall mean Her Majesty's superior courts of record at <i>Westminster</i> (b)
"Oath ;"	The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :
"County ;"	The word "county" shall include riding or other division of a county having a separate commission of the peace (b) and it shall also include county of a city or county of a town :
"Justice ;"	The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and if such matter arise in respect of lands or streams situated not wholly in one jurisdiction, shall mean a justice acting for the county or place where any part of such lands or streams shall be situated ; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together : (b)
	* * * * *
"Quarter sessions ;"	The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace :
"The town commissioners ;"	The expression "the town commissioners" shall mean the parties defined under that title in the special Act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act :
"Inspector ;"	The word "inspector" shall mean an officer appointed under any local Act relating to the town or district supplied with water under the special Act for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts.

(a) See *Maddock v. Wallasey Local Board*, ante, p. 863. See also as to the meaning of the word "street" in a local Act incorporating this Act. *Bristol Waterworks Company v. Bristol (Mayor, &c., of)*, 5 T. L. R. 551. "Street," as here defined, includes a private street. *Hill v. Wallasey Local Board* [1894], 1 Ch. 133 ; 63 L. J. Ch. 1 ; 69 L. T. 641 ; 42 W. R. 81.

(b) Words relating to Scotland or Ireland only are here omitted.

And with respect to citing this Act or any part thereof, be it enacted as follows :—

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression “The Waterworks Clauses Act, 1847.”

Appendix.

Citing the Act.

Short title of this Act.

Form in which portions of this Act may be incorporated in other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

And with respect to mines, be it enacted as follows :—(c)

XVIII. The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals(d) under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Undertakers not entitled to mines unless expressly purchased.

XIX. The undertakers shall from time to time within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water, and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act; and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district.(e)

Map and plan of underground works to be made and corrected from time to time.

(e) These sections, 18—27, are incorporated by the Public Health (Support of Sewers) Act, 1883, *ante*, p. 469. These sections amount to a code defining and regulating the mutual rights of water companies and owners of minerals. *South Staffordshire Waterworks Company v. Mason*, 56 L. J. Q. B. 255; 57 L. T. (N.S.) 116; 3 T. L. R. 217. They very closely resemble sections 77—82 of the Railways Clauses Act, 1845, and the cases decided under that Act may be referred to, particularly *Midland Railway Company v. Miles* (No. 1), 30 Ch. D. 634; 55 L. J. Ch. 251; 53 L. T. (N.S.) 381; 34 W. R. 136, and *Midland Railway Company v. Miles* (No. 2), 33 Ch. D. 632; 55 L. J. Ch. 745; 55 L. T. (N.S.) 428; 35 W. R. 76; *Maritime Coal Company v. Barry Dock and Railway Company*, 2 T. L. R. 803.

(d) Minerals include freestone (*Bell v. Wilson*, L. R. 1 Ch. 303; 35 L. J. Ch. 337; 14 L. T. (N.S.) 115; 14 W. R. 493; 12 Jur. (N.S.) 263); stone got from quarries (*Micklethwait v. Winter*, 6 Ex. 644; 20 L. J. Ex. 313); granite (*Attorney-General v. Welsh Granite Company*, 35 W. R. 617; 1 T. L. R. 549); slate (which is expressly mentioned in the section) (*Cleveland v. Meyrick*, 37 L. J. Ch. 124; 17 L. T. (N.S.) 238); coprolites (*Attorney-General v. Tomline*, 5 Ch. D. 750; 46 L. J. Ch. 654; 36 L. T. (N.S.) 684; 25 W. R. 802); every substance which can be got from underneath the surface of the earth for purposes of profit, such as china clay (per MELLISH, L.J., in *Heat v. Gill*, L. R. 7 Ch. 712; 41 L. J. Ch. 761; 27 L. T. (N.S.) 291; 20 W. R. 957; *Midland Railway Company v. Cheekley*, L. R. 4 Eq. 19; 36 L. J. Ch. 380; 16 L. T. (N.S.) 260; 15 W. R. 671), but not common clay forming the surface or subsoil of land. *Glasgow Magistrates v. Farie*, 13 App. Cas. 657; 58 L. J. P. C. 33; 60 L. T. (N.S.) 274; 37 W. R. 627. This decision was explained in *Jersey (Earl of) v. Neath Guardians*, 22 Q. B. D. 555; 58 L. J. Q. B. 573; 37 W. R. 388; 53 J. P. 404. The mines referred to in the section include those which can only be worked by open or surface operations. *Midland Railway Company v. Robinson* [1891], A. C. 19; 59 L. J. Ch. 442; 62 L. T. (N.S.) 194; 38 W. R. 577; 51 J. P. 580; 6 T. L. R. 100.

(e) The map required to be made by 46 & 47 Vict. c. 37, s. 3, *ante*, p. 470, was to be made before 25th August, 1884.

Appendix.

Copies of such map or plan to be deposited with clerk of the peace, &c.

XX. The undertakers shall from time to time within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in *England* of every county in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in *England* in which such underground work shall be situate, copies of the said map or plan, with all such particulars and all such corrections and additions as aforesaid, so far as relates to such counties and parishes respectively.(a)

Clerks of the peace, &c., to receive and keep copies of the map, &c., and allow inspection.

7 Will. 4, and 1 Vict. c. 83.

XXI. The said clerks of the peace and parish clerks, shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default as is provided in the case of maps and plans deposited under an Act passed in the first year of the reign of Her Majesty, intitled *An Act to compel Clerks of the Peace for Counties, and other Persons to take the custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*(b)

As to working of mines lying near the works.

XXII. Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be underground, and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines, to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation.(c)

If undertakers do not state their willingness to treat for payment of compensation, owner may work the mines.

XXIII. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner the same shall be forthwith repaired or removed (as the case may require), and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any of the superior courts.(d)

(a) Words in this section relating to Scotland or Ireland only are omitted. A company who have not deposited a survey and map in accordance with this section have no right to the support of the soil in which their pipes are laid as against the owner of the minerals underneath. *South Staffordshire Waterworks Company v. Mason*, 56 L. J. Q. B. 255; 57 L. T. (N.S.) 116; 3 T. L. R. 217.

(b) This Act is now called the Parliamentary Documents Deposit Act, 1837. Words in this section relating to Scotland or Ireland only are omitted.

(c) Sec 46 & 47 Vict. c. 37, s. 3, as to the power of a local authority to define the extent to which they require support to be left, and as to the mode of assessing compensation. To justify a notice under this section there must be a *bonâ fide* intention to work the mines by the owner or his lessees or licensees. *Midland Railway Company v. Robinson*, ante, p. 873.

(d) The mines may be worked by open workings if that is usual in the district, *Midland*

XXIV. If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Appendix.

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Mining communications.

XXV. Except where otherwise provided for by agreement, the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals, extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid, touching the price of such materials, the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act if the undertaking shall be situate in England. . . . (e)

Undertakers to make compensation to owner, lessee, or occupier of mines for expenses incurred by severance of mines or by interruptions of or restrictions on works, and for minerals not obtained.

Disputes to be settled by arbitration.

XXVI. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the undertakers, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Power to undertakers to enter and inspect the working of mines, after giving notice of the same.

XXVII. Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act. (f)

Nothing to prevent undertakers from being liable to actions for injury done to mines.

Railway Company v. Miles, ante, p. 873; and see *Midland Railway Company v. Robinson*, ante, p. 873; *Ruabon Brick and Terra Cotta Company v. Great Western Railway* [1893], 1 Ch. 427; 62 L. J. Ch. 433; 68 L. T. (N.S.) 110; 41 W. R. 418; 2 R. 237; *In re an Arbitration between Lord Geyard and London and North Western Railway Company* [1895], 1 Q. B. 459; 64 L. J. Q. B. 260; 72 L. T. (N.S.) 142; 43 W. R. 374, 11 T. L. R. 170. See further, as to the right to work the mines so as to let down the surface, *Consett Waterworks Company v. Ritson*, 22 Q. B. D. 318, 702; 60 L. T. (N.S.) 360; 53 J. P. 373; 5 T. L. R. 435. For a case involving a claim to work mines under a canal in pursuance of a special Act, see *Knowles v. Lancashire and Yorkshire Railway Company*, 14 App. Cas. 248; 59 L. J. Q. B. 39; 61 L. T. (N.S.) 91; 54 J. P. 103. Apparently the undertakers could not be compelled by *mandamus* to reinstate the waterworks if damaged by the working of the mines. See *Reg. v. Great Western Railway*, 62 L. J. Q. B. 572; 69 L. T. 572; 58 J. P. 74.

(e) Words relating to Scotland or Ireland only are here omitted. See 46 & 47 Vict. c. 37, s. 3, sub-sect. (4), as to the method of settling disputes as to compensation. As to the compensation which may be claimed, see *Whitehouse v. Wolverhampton and Walsall Railway Company*, L. R. 5 Ex. 6; 39 L. J. Ex. 1; 21 L. T. (N.S.) 558; *Barnsley Canal Navigation Company v. Twibell*, 7 Beav. 19; 13 L. J. Ch. 434; *Ex parte Neath and Brecon Railway Company*, 2 Ch. D. 201; 45 L. J. Ch. 196.

(f) This section is limited to damage to mines. Per VAUGHAN WILLIAMS, J., in *Harrison v. Southwark and Vauxhall Water Company* [1891], 2 Ch., at p. 415.

Appendix.*Laying of pipes.*

Power to break up streets, &c., under superintendence and to open drains, and to lay pipes, &c.

Undertakers not to enter on private land without consent.

Notice to be served on persons having control, &c., before breaking up streets or opening drains.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows :—(a)

XXVIII. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.(b)

XXIX. Provided always, that nothing herein contained shall authorize or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

XXX. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

(a) Sections 28—34 are incorporated by the Public Health Act, 1875, s. 57, *ante*, p. 83. See also section 149 of that Act, and the notes thereto; and the corresponding clauses of the Gasworks Clauses Act, 1847, *ante*, p. 863.

(b) The power given by this section includes any works which the undertakers may deem necessary for the purpose of regulating the supply of water, and is not confined to the laying down of apparatus underground, but enables the undertakers to place such works on the surface of the street as may not be inconsistent with the substantial reinstatement of the road in its previous condition or create a nuisance; and it was held, therefore, that a water company was authorized by the section to place in the pavement of a street covers or guard boxes to protect stop-valves placed for the purpose of regulating the supply of water in the communication pipes by which water was supplied to premises in the street, such covers or guard boxes not creating a nuisance or being inconsistent with the substantial reinstatement of the pavement. *East London Waterworks Company v. St. Matthew, Bethnal Green (Vestry of)*, 17 Q. B. D. 475; 55 L. J. Q. B. 571; 54 L. T. (N.S.) 919; 35 W. R. 37; 50 J. P. 820. Where the cover of such a guard box to a stopcock attached to a service pipe supplying a private house was out of repair and could not be repaired without breaking up the street, and an accident occurred by a foot passenger tripping over it, the company were held liable, even assuming that the property in the guard box was in the occupier of the private house because the company had power to break up the street to repair it which the occupier could not do. *Chapman v. Fylde Waterworks Company* [1894], 2 Q. B. 599 64 L. J. Q. B. 15; 71 L. T. (N.S.) 539; 59 J. P. 5; 43 W. R. 1; 10 T. L. R. 580.

Public water commissioners in Scotland had statutory authority to lay a line of water pipes along a road which passed over two girder bridges belonging to a railway company. These bridges were constructed of several flat girders with spaces between them. Small transverse girders were placed on these main girders and supported iron sole plates forming a floor on which the material for the roadway was placed. This construction gave the bridges a very thin skin within which there was not sufficient space to lay the water mains. Accordingly, the commissioners wanted to remove the sole plates and hang their water mains by iron bars attached to the cross girders, carrying the pipes through the stone abutments forming the solid ends of the bridges on either side above the cuttings :—Held, that the powers conferred by sections 28 and 29 of this Act did not entitle the commissioners to interfere with the weight-bearing portions of the bridges and they were interdicted from doing what they proposed. *Glasgow and South Western Railway Company v. Magistrates of Glasgow*, 21 Ct. Sess. Cas. (4th ser.) 1033; 31 Scottish Law Reporter, 883; affirmed in H. L. [1895], A. C. 376; 72 L. T. (N.S.) 809; 11 R. (July) 43; 32 Scottish Law Reporter, 733.

XXXI. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof,^(c) or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer.

Appendix.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

XXXII. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept there against, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Streets, &c., broken up to be reinstated without delay.

XXXIII. If the undertakers open or break up any street or bridge, or any sewer drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made, a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

Penalty for delay in reinstating streets, &c.

XXXIV. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special Act.^(d)

In case of delay, persons having control of streets, &c., may reinstate.

* * * * *

^(c) That is, after notice to the highway authority sufficient to enable them to judge whether what is proposed ought to be done without modification. *Edgware Highway Board v. Colne Valley Water Company*, 46 L. J. Ch. 889. In the same case it was held that the plan should show not only the mode and manner of opening the street, but also the depth and position of the cutting, and such other particulars as would enable the road authority to judge whether what was proposed to be done should be accepted without modification without going to the justices. This was approved of by the Court of Appeal in *East Molesey Local Board v. Lambeth Waterworks Company* [1892], 3 Ch. 289; 62 L. J. Ch. 82; 67 L. T. (N.S.) 493; 2 R. 88.

^(d) See the Public Health Act, 1875, s. 251, *ante*, p. 333.

Appendix.

*Pipes to be laid
by the under-
takers.* —

Undertakers
to lay down
communication
pipes, on request
of occupier and
with consent of
owners.

And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows :—(a)

XLIV. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier, *[with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner]*, (b) and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers ; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent (c) as shall be agreed upon, or in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in *England* be settled by two justices and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates ; and such pipes and other works shall not be subject to distress nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained. (d)

Penalty on
undertakers
for neglect, &c.,
to lay communi-
cation pipes.

XLV. If upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

On non-payment
of rate, or if
house be un-
occupied, under-
takers may
remove pipes,
&c., provided
by them.

XLVI. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines ; and if such owner, after ten days' notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works ; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrears of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates are directed by this or the special Act to be recovered : Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him ; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid, on demand.

Owner to be
at liberty to
purchase the
pipes.

XLVII. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing

(a) Sections 44 to 74 are incorporated by the Public Health Act, 1875, s. 57, *ante*, p. 83. The proviso to that section provides that the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof.

(b) These words are to be omitted. See the Public Health Act, 1875, s. 57, *ante*, p. 83. As to the meaning of the expression "consumer" in a special Act, see *Cooke v. New River Company*, 14 App. Cas. 698 ; 59 L. J. Ch. 333 ; 61 L. T. (N.S.) 816 ; 54 J. P. 260.

(c) This rent may be deducted from the rent paid to the owner. See the Public Health Act, 1875, s. 57, *ante*, p. 83.

(d) Words relating to Scotland or Ireland are omitted from this section.

and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

Appendix.

And with respect to the communication pipes to be laid down by the inhabitants, be it enacted as follows :—

Pipes to be laid by inhabitants.

XLVIII. Any owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act who shall wish to have water from the water-works of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises, by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground,^(e) and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in *England* by two justices or in either case by the inspector to be appointed as aforesaid : Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days' notice of his intention to do so.^(d)

Power to inhabitants to lay service pipes from houses to pipes of undertakers.

XLIX. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days' notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers ; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer failed to attend at the time mentioned in the said notice ; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in *England* be settled by two justices or in either case by the inspector to be appointed as aforesaid.^(d)

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor.

L. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Bore of service pipes.

LI. Any person who shall have laid down any pipe or other works or who shall have become the proprietor thereof, may remove the same, after having first given six days' notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal ; and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal ; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Service pipes may be removed after giving notice of the same.

Penalty for removing pipes without notice.

LII. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises, and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be,^(f) and making compensation for any damage done in the execution of any such work : Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act.^(g)

Power to inhabitants to break up pavements, &c.

(e) Including the owner of the soil of a highway. See *Goodson v. Richardson*, L. R. 9 Ch. 221 ; 43 L. J. Ch. 790 ; 30 L. T. (N.S.) 142 ; 22 W. R. 337 ; 38 J. P. 436.

(f) See *Reg. v. East and West India Docks, &c., Railway Company*, ante, p. 864.

(g) A waterworks company is not liable for the negligence of an occupier in opening a street under this section. The word pavement as used in this section is not confined to the footpath only. See *Glover v. East London Waterworks Company*, 17 L. T. (N.S.) 475.

As to the power of a company to require a consumer to fix a screw-down valve in the street to shut off water from the premises as apparatus for regulating the supply within the meaning

Appendix.

Right of owners or occupiers to supply of water for domestic purposes.

Protection of water.

Persons using water not required to be laid on at high pressure to provide cisterns, &c.

Penalty for neglect.

Penalty for suffering cistern, &c., to be out of repair, so that water is wasted.

LIII. Every owner and occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.(a)

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows :—

LIV. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provided a proper cistern to hold the water with which he shall be so supplied, with a ball and stop-cock, in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball, and stop-cock in good repair, so as effectually to prevent the water from running to waste ; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball or stop-cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop-cock shall be provided or repaired, as the case may require.(b)

LV. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball or stop-cock, to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.(c)

of a special Act, see *Ward v. Folkestone Waterworks Company*, 24 Q. B. D. 334 ; 59 L. J. M. C. 65 ; 62 L. T. (N.S.) 321 ; 38 W. R. 426 ; 54 J. P. 628.

(a) As to the duty of the company to supply water fit for domestic use, see *Attorney-General v. North Shields Waterworks Company*, “Times,” 12th May, 1892. The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling-house, and used for the sole accommodation of the occupier, was held to be for domestic use in *Bushby v. Chesterfield Waterworks Company*, E. B. & E. 176 ; 22 Jur. 757 ; 27 L. J. M. C. 174 ; 22 J. P. 689. But see 26 & 27 Vict. c. 93, s. 12, *post*. The guardians of a union are entitled under this section to supply to a workhouse, such a supply being for domestic purposes. *Lisheard Union v. Lisheard Waterworks*, 7 Q. B. D. 505 ; 45 J. P. 780. The phrase “domestic purposes” includes a supply for a fixed bath. *Weaver v. Cardiff (Mayor of)*, 48 L. T. (N.S.) 906 ; 47 J. P. 599, unless baths are excluded by express words. *Walker v. Lambeth Waterworks Company*, 71 L. T. 75 ; 58 J. P. 736 ; 10 Times L. R. 401 ; 38 Sol. Journ. 300 ; but not for watering a garden (per JESSEL, M.R., in *Low v. Lambeth Waterworks Company*, not reported). See, however, *Bristol Waterworks Company v. Uren*, *post*, p. 884, and *Grand Junction Waterworks v. Neal*, 30 Law Journal Newspaper, 85.

When a supply was cut off for non-payment of water rates, the company were held not warranted in refusing to supply a subsequent tenant until his arrears were paid. *Sheffield Waterworks Company v. Wilkinson*, 4 C. P. D. 410 ; 48 L. J. M. C. 45. See further, as to the cutting off of a supply, 50 & 51 Vict. c. 21, *post*.

As to the right of a company to cut off the supply when the consumer has failed to provide a meter for water supplied for purposes other than for “family use,” see *Sheffield Waterworks Company v. Carter*, 8 Q. B. D. 632 ; 51 L. J. M. C. 97 ; 30 W. R. 889 ; 46 J. P. 548. And as to the obligation to provide a meter in such case, see *Sheffield Waterworks Company v. Bingham*, 25 Ch. D. 443 ; 52 L. J. Ch. 624 ; 48 L. T. (N.S.) 604. These cases are more fully set out, *ante*, p. 85.

The company are only bound to furnish a reasonable supply, that is, a supply which is reasonable according to the means at their disposal. *Jackson v. Farnham Water Company*, 3 T. L. R. 632.

As to drought being an unavoidable cause preventing the supply and excusing the undertakers from furnishing a sufficient supply, see *Industrial Dwellings Company v. East London Waterworks Company*, 58 J. P. 430.

(b) Where a company were entitled to require the provisions of “proper ball and stop-cocks, or other necessary apparatus for regulating the supply,” it was held that they could not require a screw-down valve to be inserted in the communication pipe laid in the street, so that the water might be shut off from the premises on any indication of waste. *Ward v. Folkestone Waterworks Company*, *supra*.

As to the conditions of constant supply in the metropolis, see *West Middlesex Waterworks Company v. Tappenden*, 5 T. L. R. 477.

(c) Section 55 was repealed by the Statute Law Revision Act, 1875, so far as it relates to special Acts with which 26 & 27 Vict. c. 93, *post*, is incorporated.

LVI. The undertakers may repair any such cistern, pipe, ball or stop-cock, so as prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received (d) as damages.

Appendix.

Undertakers may repair cisterns, &c.

LVII. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act, in order to examine if there be any waste or misuse of such water; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

Power to surveyor employed by undertakers to enter houses to inspect, &c.

LVIII. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person, or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty for allowing persons to use water supplied by undertakers.

LIX. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit belonging to the undertakers, or any pipe leading to any such reservoir, watercourse, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds. (e)

Penalty for taking water belonging to undertakers without agreement.

LX. Every person who shall wilfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty for destroying valves drawing off water, &c.

And with respect to the provisions for guarding against fouling the water of the undertakers, be it enacted as follows:—(f)

Fouling the water.

LXI. Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds; (that is to say,)

Penalties for causing the water of the undertakers to be fouled, &c.

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein any dog or other animal:

Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct, or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing:

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled:

(d) *Sic* in Parliament Roll. It should of course be "recovered."

(e) Section 59 is repealed by the Statute Law Revision Act, 1875, to the same extent as section 55, *ante*. This section provides no penalty for taking water from an unoccupied house. See *Piercy v. Pope*, 45 L. T. (N.S.) 477; 30 W. R. 60; 46 J. P. 102. See also with reference to this section, *Hildreth v. Adamson*, *ante*, p. 91. As to larceny of water, see *Perens v. O'Brien*, *ante*, p. 86.

A section in a special Act provided that if any person should wilfully waste the water of the company, or apply it to any purpose other than that agreed upon, he should be liable to a penalty. It was held that this section did not apply to a case where water, after being used for ordinary domestic purposes, was conveyed into an apparatus for flushing a water-closet. *Evans v. Gornall*, 8 T. L. R. 620.

(f) See also 26 & 27 Vict. c. 93, ss. 16—20, *post*.

Appendix.

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued :

Penalty for permitting substances produced in making gas to flow into the streams or works of the undertakers.

LXII. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds ; and such penalty shall be recovered, with full costs of suit, in any of the superior courts ; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.(a)

Daily penalty during the continuance of the offence.

LXIII. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the Act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Penalty on gas makers causing water to be fouled.

LXIV. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special Act, such person shall forfeit to the undertakers for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to open ground and examine gas pipes, to ascertain whether water is being fouled by gas.

LXV. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground and examine the pipes, conduits, and works of the persons making or supplying gas ; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours' notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay, or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes.(b)

Expenses to abide the result of the examination.

LXVI. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas ; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

Recovery of expenses.

LXVII. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

Water rates.

And with respect to the payment and recovery of the water rates, be it enacted as follows :—

Rates to be recoverable from person supplied with water.

LXVIII. The water rates, except as hereinafter and in the special Act mentioned, shall be paid by and be recoverable from the person requiring, receiving, or using

(a) See the Gasworks Clauses Act, 1847, s. 21, *ante*, p. 866, and the note thereto ; and the Public Health Act, 1875, s. 68, *ante*, p. 94.

(b) See also sections 28—34, *ante*.

the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value the same shall be determined by two justices.(c)

(c) That is, the net annual value. See the Public Health Act, 1875, s. 56, *ante*, p. 83. Annual value, according to the Public Health Act, 1875, s. 56, means *net* annual value as defined by section 4 of that Act, *ante*, p. 11. While, therefore, the decisions upon the meaning of the term "annual value" are of no importance with regard to water rates made by local authorities under the Public Health Act, 1875, they are useful in construing local Acts and some of them deal with points which may arise even where the rates are made by local authorities. They are, therefore, set out here.

By their local Act, 16 Vict. c. cxii., s. 79, the plaintiffs were bound to supply the houses within a certain district with water "at the following rate per annum, that is to say, where the rent" of such dwelling-house should not amount to 7*l.* per annum, at a rate not exceeding 6 per cent. per annum on such *rent*, but not exceeding 7*s.* 2*d.* per annum; and so on in a graduated scale. The defendant was owner of several small houses supplied with water by the plaintiffs, in respect of which he paid, either under statutory obligation or by voluntary agreement, the poor rate, water rate, and district rate. It was held that "rent" in section 79 was equivalent to "annual value," and that in estimating the rent on which the water rate was payable, the defendant was entitled to deduct the water rates so paid by him. *Sheffield Waterworks Company v. Bennett*, L. R. 7 Ex. 409; 8 Ex. 196; 42 L. J. Ex. 121; 28 L. T. (N.S.) 509; 21 W. R. 686.

By section 56 of the New River Company's Act, 1852 (15 & 16 Vict. c. cix.), which incorporates the Waterworks Clauses Act, 1847, it is enacted that "nothing in this Act or in any Act incorporated herewith contained shall prevent the company from recovering any sum of money not exceeding 50*l.*, which shall be due to them for water rates or rents, or for damages, costs, or expenses, by action or proceeding in such manner as is by law provided for the recovery of debts not exceeding 50*l.*" It was held that where a *bond fide* dispute arises as to the annual value, the company must, before they can sue for the rate, obtain a decision of justices in that dispute under section 68 of the Act of 1847, *supra*. *New River Company v. Mather*, L. R. 10 C. P. 442; 44 L. J. M. C. 105; 32 L. T. (N.S.) 658; 39 J. P. 614.

By a special Act of a water company which incorporated the Waterworks Clauses Act, 1847, save so far as the clauses or provisions thereof were expressly varied or excepted, the company were obliged to supply water to the occupiers of dwelling-houses for domestic purposes at a rate not exceeding 6*l.* per cent. per annum, upon the annual "rack rent or value" of the premises supplied. It was further provided that a subsequent section of the Act that the rate should be "payable according to the annual value at which the premises were from time to time assessed to the poor rate if the same were so assessed, or, if not, according to the net annual value of the premises." It was held that the water rate charged by the company must be calculated on the "rateable value," not on the "gross estimated rental" of the premises supplied with water. *Warrington Waterworks Company v. Longshaw*, 9 Q. B. D. 145; 51 L. J. Q. B. 498; 46 L. T. (N.S.) 815; 31 W. R. 11; 46 J. P. 773.

It was provided by a water Act that the charge to be made for the supply of water for domestic use should be at a rate varying according to the "annual rent" of the premises supplied. The appellant was the owner of certain houses supplied with water by the respondents under the Act. The houses were let at weekly rents, the appellant paying all rates charged thereon, and also for all repairs and insurances in respect thereof. He was allowed as an owner, under 32 & 33 Vict. c. 41, s. 4 (The Poor Rate Assessment and Collection Act, 1869), a reduction of 30 per cent. from the full amount of the poor rate which an occupier if rated would have paid. The respondents charged the appellants with water rates calculated on the following basis: They multiplied the weekly rents by fifty-two and deducted from the amount to arrive at the actual sums paid by the appellant for rates and then charged the water rates upon the balance. It was held that in order to arrive at the "annual rent" upon which the water rate was to be computed, an allowance should be made in respect of "voids," *i.e.*, houses lying vacant from time to time; and that the actual amount of the poor rates and other rates paid by the appellant was rightly deducted, but that the appellant was not entitled to deduct the full amount of the rates which an occupier if rated would have paid; nor the amount he paid for repairs and insurances. *Smith v. Mayor, &c., of Birmingham*, 11 Q. B. D. 195; 52 L. J. M. C. 81; 49 L. T. (N.S.) 25; 31 W. R. 788; 47 J. P. 645; and see *Dobbs v. Grand Junction Waterworks Company*, *infra*.

A water company by a special Act of 1826 was compellable to supply water to certain dwelling-houses in the metropolis for domestic purposes at certain rates per cent. per annum payable "according to the actual amount of the rent where the same can be ascertained, and where the same cannot be ascertained, according to the actual amount or annual value upon which the assessment to the poor's rate is computed in the parish or district where the house is situated." By a special Act of 1852, the company were com-

Appendix.

Where several houses are supplied by one

LXIX. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates

pellable to furnish water "where the annual value of the dwelling-house or other place supplied shall not exceed 200*l.* at a rate per cent. per annum on such value not exceeding 3*l.*" The occupier of one of the houses was lessee for a long term at a ground rent, and paid no rent except the ground rent:—Held, reversing the decision of the Court of Appeal, that whether the later Act repealed the provisions of the former Act or not the case must be dealt with under the later Act; and that the words "annual value" in the later Act meant "net annual value" as defined in the Parochial Assessment Act, 1836 (6 & 7 Will. 4, c. 96), s. 1:—Held also, that "annual value" had the same meaning in the earlier as in the later Act. *Dobbs v. Grand Junction Waterworks Company*, 9 App. Cas. 49; 53 L. J. Q. B. 50; 49 L. T. (N.S.) 541; 32 W. R. 433; 48 J. P. 5.

By the special Act of a water company it was provided that water should be supplied for domestic purposes by the company at a rate per cent. upon the annual value of the dwelling-house or other place supplied, that a supply of water for domestic purposes should not include a supply of water for, among other things, any trade or manufacture, or business requiring an extra supply of water, and that the company might furnish water for other than domestic purposes on such terms as might be agreed on between the company and the consumer. The company supplied water for domestic purposes to a house occupied as a licensed public-house. The company contended that the annual value of the premises as a licensed public-house should be taken as the basis of the water rate payable in respect of such supply, and that therefore the fact of the premises being licensed, and a premium which had been paid for the lease of the premises at a public-house ought to be taken into consideration in fixing the value. The occupier contended that such water rate should be based upon the value of the premises for domestic purposes only. It was held that the contention of the company was correct. *West Middlesex Waterworks Company v. Coleman*, 14 Q. B. D. 529; 54 L. J. M. C. 70; 52 L. T. (N.S.) 578; 33 W. R. 549; 49 J. P. 341.

Section 68 of the Bristol Waterworks Act, 1862, enacts that the company shall furnish to every occupier of a private dwelling-house within their limits a sufficient supply of water for the domestic use of such occupier, at certain annual rents or rates, according to the "annual rack-rent or value of the premises so supplied," such supply (by section 71) not to include, amongst other things, a supply of water "for watering gardens by means of a tap, tube, pipe, or other such like apparatus." And section 32 of the Bristol Waterworks Amendment Act, 1865, enacts that "if any dispute shall arise as to the amount of the annual rent or value of any dwelling-house or premises supplied with water by the company, such dispute shall be decided by two justices: provided that the amount of the annual rack-rent or value to be fixed by such justices shall not be less than the gross sum assessed to the poor rate or less than the sum actually paid for such dwelling-house or premises." A dwelling-house and garden in the occupation of the owner were assessed to the poor rate as follows:—"Gross estimated rental 240*l.*;" "Rateable value, 204*l.*" It was proved that the value of the house without the garden would be 10 per cent. less, and that the owner contracted to pay, and did pay 1*l.* 1*s.* annually for the watering by means of a pipe and a tap in the garden which surrounded the dwelling-house, and was occupied and assessed therewith:—Held, by MATHEW and SMITH, JJ., upon a case stated by the justices that the words "gross sum assessed to the poor rate," meant the "gross estimated rental," and not "rateable or net value;" and that the water rent was chargeable upon the gross estimated rental of "the premises," including the pleasure garden occupied with the house, and not merely the dwelling-house itself, the extra charge for the garden supply being for using a pipe and a tap. *Bristol Waterworks Company v. Uren*, 15 Q. B. D. 637; 54 L. J. M. C. 97; 52 L. T. 655; 49 J. P. 564.

Where a dispute has arisen as to the amount of the water rate payable by an occupier of premises to a water company (whose special Act incorporated the Waterworks Clauses Act, 1847), the determination of the annual value of the premises supplied, by two justices, under section 68 of the Act of 1847, is a condition precedent to the right of the occupier to sue the company for cutting off the water, and for the amount alleged to have been paid in excess. *Whiting v. East London Waterworks Company*, 1 C. & E. 331.

A local waterworks Act empowered a company to distrain for water rates for an agreed amount. A later Act limited the rates to such sums as should be "reasonable." Under the Waterworks Clauses Act, 1847, which incorporates 8 & 9 Vict. c. 20, s. 140, water rates under 20*l.* are to be recovered by means of a distress warrant issued by justices. A third Act of the company in 1852 incorporated the Waterworks Clauses Act, but expressly preserved all the powers conferred by the former Acts. It was held that the right of the company to levy their own distress was kept alive by the saving clause in the Act of 1852, and that the distress by justices' warrant was additional to, and not in substitution for, the company's original remedy. *Richards v. West Middlesex Waterworks Company*, 15 Q. B. D. 660; 54 L. J. Q. B. 551; 33 W. R. 902; 49 J. P. 631.

for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

Appendix.

pipe, each shall pay as if separately supplied.

Rates to be paid quarterly in advance.

LXX. The rates shall be paid in advance^(a) by equal quarterly payments, in *England* at *Christmas Day, Lady Day, Midsummer Day, and Michaelmas Day*, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.^(b)

LXXI. The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house, for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.^(c)

Parties giving notice to discontinue use of water or removing, to pay to the next quarter day.

Although the statutory remedy provided by section 68 of the Waterworks Clauses Act, 1847, for the settlement by two justices of disputes as to the annual value of a tenement supplied by water, and the special remedy by penalties given by section 43 against a company for withholding water, have not ousted the general jurisdiction to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to value, such injunction will not be granted on the application of an owner or occupier who will not undertake to commence proceedings with due speed before the justices under section 68. *Haywood v. East London Waterworks Company*, 28 Ch. D. 138; 54 L. J. Ch. 523; 52 L. T. 175; 49 J. P. 452.

Upon the hearing of a summons to enforce payment of a water rate, the justices have power under the above section to determine a dispute as to the annual value of the premises rated. It is not necessary to their jurisdiction before making an order for payment of the rate upon such summons that the dispute should have been previously determined in a separate proceeding before justices. *Lea v. Abergavenny Improvement Commissioners*, 16 Q. B. D. 18; 55 L. J. M. C. 25; 53 L. T. (N.S.) 728; 34 W. R. 105; 50 J. P. 165.

Where water rates had been paid for a number of years without objection it was held that the excess which had been charged in respect of an annual value beyond that prescribed in the section could not be recovered back. *Henderson v. Folkestone Waterworks Company*, 1 T. L. R. 329.

So where water rate had been paid on gross value instead of net value in ignorance of the fact that the former was a wrong basis, it was held that the excess could not be recovered. *Slater v. Burnley (Mayor, &c., of)*, 59 L. T. (N.S.) 636; 36 W. R. 831; 53 J. P. 70, 535.

Where a water company were authorised by their special Act to charge at agreed rates for water supplied for purposes other than domestic, it was held that they were not by implication prohibited from entering into agreements for the supply of water for domestic purposes at agreed rates. *Southwark and Vauxhall Waterworks Company v. Dickenson*, 5 T. L. R. 251.

The Barnet Gas and Water Act, 1872 (with which is incorporated the Waterworks Clauses Act, 1847), provides (*inter alia*):—"Section 56. The company . . . shall furnish . . . a sufficient supply of water . . . at any rate, on the actual rack rental of the house or part of a house or premises supplied if the same be let at rack-rent, and on the annual value if, and while, the same is not let at rack-rent, not exceeding" (so much):—Held, that "the annual rack-rent" means the same as "the annual value," and does not mean "net annual value." *Stevens v. Barnet Gas District and Water Company*, 57 L. J. M. C. 224; 36 W. R. 924; 52 J. P. 276.

By 1 & 2 Geo. 4, c. cxiv., s. 8, the churchwardens of a parish were required to make a rate "on the full annual rent or value" of all houses rateable to the relief of the poor:—Held, that the full annual rent or value meant the full annual net value and that the rate could not be made on the gross estimated rental. *Rose v. Watson* [1894], 2 Q. B. 90; 63 L. J. M. C. 108; 70 L. T. (N.S.) 906; 42 W. R. 523; 58 J. P. 589; 10 R. 255; 10 T. L. R. 434.

^(a) Therefore no demand is necessary before proceedings for recovery. *East London Waterworks v. Kyffyn* [1895], 1 Q. B. 55; 64 L. J. M. C. 32; 71 L. T. (N.S.) 615; 59 J. P. 405.

^(b) Words relating to Scotland or Ireland only are omitted from this section.

^(c) The respondents, relying on section 58 of their private Act (15 & 16 Vict. c. 158), which extended the provisions of section 72 of the Waterworks Clauses Act, 1847, to houses not exceeding the annual value of 20*l.*, claimed water rates from the appellants, as owners of certain houses under the annual value of 20*l.* each, for two quarters, during the whole of which time such houses were unoccupied. It was held that an owner's liability for rates

Appendix.

Owners
of houses not
exceeding 10l.
rent to be liable
to water rates.

LXXII. The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the persons receiving rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

Sums paid by
owner recover-
able as rent
from tenant.

LXXIII. Provided always, that when any owner shall pay any such rate in respect of any such dwelling-house or part of a dwelling-house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease unless it have been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house; and every such sum of money payable by the tenant to the owner, under the provision hereinbefore contained, may be recovered, if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

If rates are not
paid, water may
be cut off, and
rates and
expenses re-
covered.

LXXIV. If any person supplied with water by the undertakers, or liable as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action, in any court of competent jurisdiction.(a)

* * * * *

under section 72 of the Waterworks Clauses Act, 1847, ceases on the quarterly day of payment next after the house has become unoccupied, and that as section 58 of the respondents' private Act merely extended the provisions of that section to houses not exceeding the annual value of 20l., the respondents were not entitled to recover. *British Empire Mutual Life Assurance Company v. Southwark and Vauxhall Water Company*, 59 L. T. 321; 36 W. R. 894; 59 J. P. 758. When a house is unoccupied at the beginning of a quarter, and becomes occupied in the course of that quarter, the water rate is payable only for that portion of the quarter during which the house is occupied, although the company had no notice of the non-occupation and continued to supply water. *East London Waterworks Company v. Foulkes* [1894], 1 Q. B. 819; 58 J. P. 384; 10 R. 243.

(a) See also 26 & 27 Vict. c. 93, s. 21, *post*. See *Sheffield Waterworks Company v. Wilkinson*, *ante*, p. 880. With reference to the particular mode of recovering the rates here prescribed, it may be stated that damages not specially provided for are by section 85 recoverable under the sections of the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), *ante*, p. 843. In such case the claim of a water company for arrears of rates is a complaint within section 11 of the Summary Jurisdiction Act, 1848, and the summons must be issued within six months from the date when the rate was due and demanded. *East London Waterworks Company v. Charles* [1894], 2 Q. B. 730; 63 L. J. M. C. 209; 42 W. R. 732; 10 T. L. R. 593. The rates being payable quarterly in advance no demand is necessary. *East London Waterworks v. Kyffin*, *supra*. Water rates made by an urban authority will, however, be recoverable by summary proceedings under section 256 of the Public Health Act, 1875, *ante*, p. 339.

See as to the right to cut off the water when the rates are payable by the owner, 50 & 51 Vict. c. 21, s. 4, and the notes thereto, *post*.

Appendix.

THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

(10 & 11 VICT. CAP. 34.) (b)

An Act for consolidating in One Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns.

[21st June, 1847.]

This Act shall extend only to such towns or districts in *England or Ireland* as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Incorporation of this Act with special Act.

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows :—

Interpretation.

II. The expression “the special Act” used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district, or of any class of towns or districts defined or comprised therein, and with which this Act shall be incorporated ; and the word “prescribed” used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word “prescribed” the expression “prescribed for that purpose in the special Act” had been used ; and the expression “the commissioners” shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act, with powers for executing the purposes thereof.

“The special Act :”

“Prescribed :”

“The commissioners :”

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Interpretations in this and the special Act :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Number :

Words importing the masculine gender shall include females :

Gender :

The word “person” shall include a corporation, whether aggregate or sole :

“Person :”

The word “lands” shall include messuages, lands, tenements, and hereditaments of any tenure :

“Lands :”

The word “street” shall extend to and include any road, square, court, alley, and thoroughfare within the limits of the special Act :

“Street :”

The word “month” shall mean calendar month :

“Month :”

The expression “superior courts” shall mean Her Majesty’s superior courts of record at *Westminster*

“Superior courts :”

The word “oath” shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

“Oath :”

The word “county” shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town :

“County :”

The word “justice” shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and where any matter is authorised or required to be done by two justices, the expression “two justices” shall be understood to mean two or more justices met and acting together :

“Justice :”

“Two justices :”

The expression “quarter sessions” shall mean quarter sessions as defined in the special Act, and if such expression be not there defined shall mean the court of

“Quarter sessions :”

(b) Incorporated by the Public Health Act, 1875, s. 160, *ante*, p. 223, and section 169, *ante*, p. 234. The marginal notes are as printed in the second edition of the Statutes Revised,

Appendix.*“Owner :”*

general or quarter sessions of the peace which shall be held in or at the place nearest to the district in which the matter arises requiring the cognizance of any such court, and having jurisdiction over such district :

The word “owner” used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act, shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rack rent, would be entitled to receive the rack rent from the occupier thereof :

“Cattle :”

The word “cattle” shall include horses, asses, mules, sheep, goats, and swine.

Citing the Act.

Short title of this Act.

And with respect to citing this Act, or any part thereof, be it enacted as follows :—

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression “The Towns Improvement Clauses Act, 1847.”

Form in which portions of this Act may be incorporated with other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act ; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

Naming streets.

And with respect to naming the streets and numbering the houses, be it enacted as follows :—(a)

Houses to be numbered and streets named.

LXIV. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place at or near each end, corner, or entrance of every such street the name by which such street is to be known ; and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence.(b)

Numbers of houses to be renewed by occupiers.

LXV. The occupier of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced ; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings ; and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages.(b)

Improving streets.

Houses may be set forward for improving line of street.

And with respect to improving the line of the streets, and removing obstructions, be it enacted as follows :—(a)

LXVI. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated.(c)

(a) These clauses are incorporated with the Public Health Act, 1875, by section 160, *ante*, p. 223.

(b) As to the recovery of this penalty, see section 316 of the Public Health Act, 1875, *ante*, p. 410.

(c) The word *street* is here used in its popular acceptance of a line of buildings, and does not include a highway generally. This section gives no power to divert a highway by widening it ; that can only be done under the Highway Acts, *Reg. v. Platts*, 49 L. J. Q. B. 848 ; 43 L. T. (N.S.) 159 ; 28 W. R. 915 ; 44 J. P. 765 ; or under Inclosure Acts, as in *Hornby v. Sylvester*, 20 Q. B. D. 797 ; 57 L. J. M. C. 558 ; 59 L. T. (N.S.) 666 ; 36 W. R. 679 ; 52 J. P. 468.

LXVII. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall re-sell any parts of the lands so purchased which shall not be wanted for the enlargement of the street.

Appendix.

Commissioners may purchase lands for widening streets, &c., and sell the parts not wanted.

Houses projecting beyond line of street, when taken down to be set back.

LXVIII. When any house or building, any part of which projects beyond the regular line of the street, (d) or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or towards the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains. (e)

LXIX. The commissioners may give notice to the occupier (f) of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence, or any other obstruction, or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; and such occupier shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building. (g)

Future projections of houses, &c., to be removed on notice.

(d) This does not mean a strict mathematical line, but a substantially regular line. *Tear v. Freebody*, ante, p. 201. No general line of buildings may exist in some cases. See *The Ecclesiastical Commissioners v. St. James, Clerkenwell*, 7 Jur. (N.S.) 326. *Tear v. Freebody* was explained by WILLES, J., in *Simpson v. Smith*, infra; and see *Lord Mannors v. Johnson*, 1 Ch. D. 673. When houses project and are pulled down, and the land sold for building purposes, new houses may be built on the same line as before, unless compensation be given. In determining the general line, therefore, regard ought to be had to the frontage of houses previously existing, and which may be rebuilt, as well as those still standing. *Lord Auckland v. Westminster Board of Works*, L. R. 7 Ch. 598; 41 L. J. Ch. 723; 26 L. T. (N.S.) 961; 20 W. R. 845.

As to the right of an adjoining owner to sue in respect of a building erected contrary to this section, see *Brooks v. Terry*, 4 T. L. R. 678.

As to the determination of the general line of buildings in the metropolis, see *St. George Hanover Square v. Sparrow*, 16 C. B. (N.S.) 209; 33 L. J. M. C. 118; 10 L. T. (N.S.) 504; 12 W. R. 832; 10 Jur. (N.S.) 771; *Bauman v. St. Pancras Vestry*, L. R. 2 Q. B. 528; *Wandsworth Board of Works v. Hall*, L. R. 4 C. P. 85; 38 L. J. M. C. 69; 19 L. T. (N.S.) 641; 17 W. R. 256; *Simpson v. Smith*, L. R. 6 C. P. 87; 40 L. J. C. P. 89; 24 L. T. (N.S.) 100; 19 W. R. 355; *Lord Auckland v. Westminster Board of Works*, supra; *Paddington Vestry v. Snow*, 45 L. T. (N.S.) 475; 46 J. P. 87; 30 W. R. 46; *Barlow v. Kensington Vestry*, 11 App. Cas. 257; 55 L. J. Ch. 680; 55 L. T. (N.S.) 221; 34 W. R. 521; 50 J. P. 691; *Plumstead Board of Works v. Spackman*, 10 App. Cas. 229; 53 L. J. M. C. 142; 51 L. T. (N.S.) 757; 49 J. P. 132; *St. Mary, Islington (Vestry of) v. Goodman*, 23 Q. B. D. 154; 58 L. J. M. C. 122; 61 L. T. (N.S.) 44; *Fortescue v. St. Matthew, Bethnal Green (Vestry of)* [1891], 2 Q. B. 170; 60 L. J. M. C. 172; 65 L. T. (N.S.) 256; 53 J. P. 758; *London County Council v. Cross*, 66 L. T. (N.S.) 731; *Allen v. London County Council*, 73 L. T. (N.S.) 101; 43 W. R. 674; 59 J. P. 644; 11 T. L. R. 491; *Lavy v. London County Council*, 64 L. J. M. C. 262; 73 L. T. (N.S.) 106; 11 T. L. R. 525.

(e) See also the Public Health Act, 1875, s. 155, ante, p. 201, and the notes thereto.

(f) Or owner. See the Public Health Act, 1875, s. 160, ante, p. 223.

The local authority are not obliged to give notice to the owner or occupier before passing a resolution to send him notice to remove a projection, but if he objects to their order his proper course is to apply to the local authority to be heard and lay his objections before them. *Attorney-General v. Hooper* [1893], 3 Ch. 483; 63 L. J. Ch. 18; 69 L. T. (N.S.) 340; 57 J. P. 564.

(g) As to area railings, see *Bouverie v. Miles*, 1 B. & Ad. 38; as to a projecting shop front, see *Reg. v. Ingham* 17 Q. B. 884. As to a projecting porch compare *Gordon v.*

Appendix.

Commissioners may cause existing projections to be removed on giving notice and making compensation.

LXX. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they think fit :^(a) provided that they give notice of such intended removal or alteration to the occupier^(b) of the house or building against or in front of which such obstruction or projection shall be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Doors, &c., in future not to be made to open outwards except when so allowed in case of public buildings.

LXXI. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed ; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier^(b) of such house, building, yard, or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered

St. Mary's, Islington (Vestry of) [1894], 2 Q. B. 742 ; 63 L. J. M. C. 193. A corresponding section of the Metropolis Management Act (19 & 20 Vict. c. 120) was held not to justify the removal of a shed and seats erected by a publican upon a piece of ground between the footway and the roadway, the intervening space being found not to be part of the street, and the shed and streets not being against or in front of any house. *Le Neve v. Mile End Old Town (Vestry of)*, ante, p. 14. A shopkeeper placed goods on the pavement in front of his shop for sale, and was summoned under the above section. He contended that he *bonâ fide* claimed the right to put the goods there, and the justices considered that their jurisdiction was ousted, but stated a case. It was held that the justices ought to determine whether the land on which the goods were placed was part of the highway or not ; that no question of title was involved, and that their jurisdiction was not ousted. *Leicester Urban Sanitary Authority v. Holland*, 57 L. J. M. C. 75 ; 52 J. P. 788. As to a dedication of a street subject to existing obstructions or projections, see *Fisher v. Prowse* ; *Cooper v. Walker*, 2 B. & S. 770 ; 26 J. P. 613, where such dedication was held to be an answer in actions for accidents caused by cellar flaps and projecting doorsteps. As to projections existing before the passing of the local Act, see *Wilson v. Cuntiffe*, 29 L. T. (N.S.) 913 ; 38 J. P. 231 ; *Whittaker v. Rhodes*, 46 J. P. 182. As to the liability of the occupier for accidents caused by projections, see *Tarry v. Ashton*, 1 Q. B. D. 314 ; 45 L. J. Q. B. 260 ; 34 L. T. (N.S.) 97 ; 24 W. R. 581 ; 40 J. P. 439 ; *Watson v. Ellis*, 1 T. L. R. 317, where the plaintiff tripped over a carpet laid across a pavement to a carriage ; *De Teyron v. Waring*, ib. 414 ; *Hoare v. Kearley*, ib. 426 ; *Strutt v. Southwark and Vauxhall Waterworks Company*, 5 T. L. R. 638, where the plaintiff fell in consequence of having put his staff into a stop-cock box negligently left uncovered in the road ; *Braithwaite v. Watson*, 5 T. L. R. 331, where the plaintiff was injured by reason of a coal-cellar plate in the pavement being unsecurely fastened ; *Stiefsohn v. Brooke*, 53 J. P. 790 ; 5 T. L. R. 684, where the plaintiff was injured by a lift inside an aperture adjoining the highway. As to overhead wires, see *Wandsworth Board of Works v. United Telephone Company*, 13 Q. B. D. 904 ; 53 L. J. Q. B. 449 ; 51 L. J. Q. B. 449 ; 51 L. T. (N.S.) 148 ; 32 W. R. 776 ; 48 J. P. 676.

It will be for the magistrate to decide whether the thing complained of is an obstruction to the passage. See *Gabriel v. St. James's, Westminster*, 23 J. P. 372, where the court intimated that this could be decided without calling a person to prove he had been actually obstructed. This was also decided in *Read v. Perrett*, 1 Ex. D. 349 ; 41 J. P. 135. But compare *Hill v. Somerset*, 51 J. P. 356. A projection consisting of an oriel window, the lowest part of which is 15 feet above the pavement, is not an obstruction. See *Goldstraw v. Duckworth*, 5 Q. B. D. 275 ; 49 L. J. M. C. 73 ; 44 J. P. 410.

In the Scotch case of *McMillan v. Bennett*, 32 Scottish Law Reporter, 295, the appellant, a bill poster, was convicted under section 381 of the Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), for affixing a projecting advertising board to a building without the consent of the burgh commissioners. The building in question was the back wall of a workshop, on which the appellant fixed a board or wooden lining on which to post his bills, that board being about 102 feet long, 7 feet 6 inches high, and (taking into account the straps to which the board was affixed) it projected from the wall to the extent of 1 $\frac{3}{4}$ inches. Section 159 of the Act was in much the same terms as this section. Held, following *Goldstraw v. Duckworth*, that it was not a projecting advertising board in the sense of the statute, which was intended to strike only at such projections as constituted an obstruction to the free passage of the street.

(a) See *Bagshaw v. Buxton Local Board*, ante, p. 163.

(b) Or owner. See the Public Health Act, 1875, s. 160, ante, p. 223.

so as not to open outwards; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier,^(b) and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding forty shillings.

Appendix.

LXXII. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Existing doors, &c., opening outwards may be altered.

LXXIII. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier^(b) of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

Coverings for cellar doors to be made by occupiers.

LXXIV. The occupier^(b) of every house or building in, adjoining, or near to any street shall, within seven days next after service of an order of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath; and in default of compliance with any such order within the period aforesaid, such occupier shall be liable to a penalty not exceeding forty shillings for every day that he shall so make default.^(c)

Water spouts to be affixed to houses or buildings.

And with respect to ruinous or dangerous buildings, be it enacted as follows:—

Ruinous or dangerous buildings.

LXXV. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers^(d) or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner^(e) of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices,^(f) and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed

Ruinous or dangerous buildings to be taken down or secured by owners, &c.

(c) See the Public Health Act, 1875, s. 160, *ante*, p. 223, as to the recovery of these costs from the owner, and the deduction of them from the rent, as in the case of private improvement rates.

(d) The similar provisions of section 73 of the Metropolitan Building Act, 1855, apply to any dangerous structure, notwithstanding that it does not adjoin a public highway. *London County Council v. Herring* [1894], 2 Q. B. 522; 63 L. J. M. C. 230; 58 J. P. 721; 10 T. L. R. 509.

(e) See *Reg. v. Lee*, 4 Q. B. D. 75; 48 L. J. M. C. 22; 39 L. T. (N.S.) 605; 43 J. P. 302, where it was held that the incumbent of a church was not the owner so as to render him liable in respect of its dangerous condition. The owner may remain liable under this section though a notice has been served upon him for the purpose of compulsorily taking his buildings under the Artizans Clauses Act. *Barnett v. Metropolitan Board of Works*, 46 L. T. (N.S.) 384; 46 J. P. 469.

(f) Compare the provisions of a local Act in *Cheetham v. Manchester Corporation*, 39 J. P. 343. The section implies that on the surveyor's complaint a summons must issue.

Appendix. by such justices ; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite ; and all the expenses^(a) of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

Levy of expenses by distress. LXXVI. If such owner can be found within the limits of the special Act, and if on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.^(b)

If owner cannot be found within the limits or distress cannot be made commissioners may take the house or ground. LXXVII. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving twenty-eight days' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building, or on the land whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845,^(c) in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of all such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

Commissioners may sell the materials for payment of expenses, restoring to the owner the overplus arising from the sale. * LXXVIII. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building ; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on demand ; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

Precautions during repairs. And with respect to precautions during the construction and repair of the sewers, streets, and houses, be it enacted as follows :—

Houses to be protected and bars to be erected across streets during repairs. LXXIX. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper ; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents ; and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty not exceeding five pounds.^(d)

^(a) As to the expenses which may be recovered, see *Debenham v. Metropolitan Board of Works*, 6 Q. B. D. 112 ; 50 L. J. M. C. 29 ; 43 L. T. (N.S.) 596 ; 29 W. R. 353 ; 45 J. P. 190. Where an owner was required to do work under this section, and he applied to the tenant for leave to enter, who vacated her premises and intimated an intention of surrendering them, and the owner accepted the key and executed the works, thereby rendering occupation impossible, it was held there had been an acceptance of the surrender. *Smith v. Roberts*, "Times," 13th April, 1892.

^(b) These expenses must be recovered within six months from the date of demand. See the cases in the notes to section 252 of the Public Health Act, 1875, *ante*, p. 335.

^(c) Section 18, *et seq.*, *ante*, p. 812.

^(d) This section does not mean that the traffic in the street is to be entirely stopped during the execution of the works, but merely that bars and chains or other protection should be placed so as to prevent vehicles and persons from passing over the place where the works are being executed. *Woodall v. Nuttall*, 56 J. P. 150 ; 8 Times L. R. 68.

LXXX. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; and every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued.(e)

Appendix.

Hoards to be set up during repairs with footways and lights.

LXXXI. When any building materials, rubbish, or other things are laid, or any hole made in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising while such materials or hole remain; and such person shall at his own expense cause such materials or other things and such hole to be sufficiently fenced and inclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued.(f)

When building materials are deposited in streets, &c., the same shall be lighted at night and fenced.

LXXXII. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding five pounds to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding forty shillings for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Penalty for continuing deposits of building materials or excavations for an unreasonable time.

LXXXIII. If any building or hole or any other place near any street(g) be, for want of sufficient repair, protection, or inclosure, dangerous to the passengers along

Commissioners to cause dangerous

(e) In districts where the Public Health Acts Amendment Act, 1890, has been adopted, this section is superseded by section 34 of that Act, *ante*, p. 585. As to the right to erect a hoarding, though it may obstruct a highway to some extent, see *Fisher v. Prowse*, *ante*, p. 890. As to the liability for damages for wrongfully erecting and continuing a hoarding, see *Bradbee v. Christ's Hospital*, 4 M. & G. 714; 5 Scott N. R. 79; 2 Dowl. (N.S.) 164. As to a case where a license for a hoarding was required by a local Act, see *Reg. v. Commissioners of Sewers*, 22 L. T. (N.S.) 582. As to the liability for injuries caused by negligently erecting and keeping a hoarding, see *Hoare v. Kearley*, 1 T. L. R. 426. As to rating of hoardings used as advertising stations, see the Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), and *Chappell v. St. Botolph Overseers* [1892], 1 Q. B. 561; 65 L. T. 581; 40 W. R. 492; 56 J. P. 310; and *Shelley v. Dillon*, 30 L. R. Ir. 304.

(f) In *Fearnley v. Ormsby*, 4 C. P. D. 136; 27 W. R. 823; 43 J. P. 384, it was held that a surveyor of highways was rightly convicted under section 72 of the Highway Act, 1835, for leaving materials for the repair of the road without lights and fences at night. As to personal knowledge being necessary for conviction, see *Hardeastle v. Bielby* [1892], 1 Q. B. 709; 61 L. J. M. C. 101; 66 L. T. (N.S.) 343; 56 J. P. 549.

(g) A goit running by the side of an ancient public footpath was held not to be a hole or other place within the meaning of these words. *Wilson v. Mayor, &c., of Halifax*, *ante*, p. 174.

Appendix.

places to be repaired or inclosed.

such street, the commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent danger therefrom; and the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

* * * * *

Slaughter-houses.

And with respect to slaughter-houses, be it enacted as follows:—(a)

Commissioners may license slaughter-houses, &c.

CXXV. The commissioners may license(b) such slaughter-houses and knacker's yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

New slaughter-houses not to be erected without a license.

CXXVI. No place shall be used or occupied as a slaughter-house(c) or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special Act,(d) and has so continued ever since, unless and until a license for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners; and every person who, without having first obtained such license as aforesaid, uses(e) as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding five pounds, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing slaughter-houses, &c., to be registered.

CXXVII. Every place within the limits of the special Act which shall be used as a slaughter house or knacker's yard shall, within three months after the passing of such Act, be registered by the owner or occupier thereof at the office of the commissioners, and on application to the commissioners for that purpose the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose; and every person who after the expiration of the said three months, and after one week's notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard, without its being so registered, shall be liable to a penalty not exceeding five pounds for such offence, and a penalty not exceeding ten shillings for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Commissioners may make bye-laws for regulation of slaughter-houses, &c.

CXXVIII. The commissioners shall, from time to time, by bye-laws(f) to be made and confirmed in the manner hereinafter provided, make regulations for the licensing, registering, and inspection of the said slaughter-houses and knacker's

(a) Where the Public Health Acts Amendment Act, 1890, has been adopted in any district it will be necessary to bear in mind the provisions of sections 29—31 of that Act, *ante*, p. 588, as to the duration of licenses, notice of change of occupation of slaughter-houses, and the revocation of licenses on conviction for the sale of meat unfit for food.

(b) A resolution of a committee, confirmed by the board, was held to be equivalent to a license, though not communicated to the grantee. *Howarth v. Manchester (Mayor of)*, 6 L. T. (N.S.) 683. A license for the erection of a slaughter-house is sufficient to authorise its use. *Anthony v. Brecon Market Company, infra*.

(c) This Act does not apply to places where cattle are slaughtered for human food, as in *Elias v. Nightingale*, 8 E. & B. 698; 4 Jur. (N.S.) 166; 27 L. J. M. C. 151; 22 J. P. 131.

(d) The application of premises for the slaughter of bullocks which had been used for the slaughter of pigs before the Act came into operation does not take the case out of the exception. *Brighton Local Board v. Stenning*, 15 L. T. (N.S.) 567; 31 J. P. 246. The enlargement of premises does not destroy their exemption. *Hanman v. Adkins*, 40 J. P. 744.

(e) A person who merely pays the owner of premises for being allowed to slaughter animals there does not use such premises as a slaughter-house within this section. *Reg. v. Heyworth*, 14 L. T. (N.S.) 600; 30 J. P. 423. A market company who had not used any part of their premises as a slaughter-house before this Act was applied to the district were held to be rightly convicted under this section for using part of their premises as a slaughter-house after the Act was applied. *Liverpool New Market Company v. Hodson*, 15 L. T. (N.S.) 534; 31 J. P. 245. As to what is a sufficient license, see *Anthony v. Brecon Market Company*, L. R. 7 Ex. 399; 41 L. J. Ex. 201; 26 L. T. (N.S.) 979; 21 W. R. 27; 31 J. P. 200; *Hughes v. Trew*, 36 L. T. (N.S.) 585; 41 J. P. 453.

(f) See the Markets and Fairs Clauses Act, 1847, s. 42, *ante*, p. 861. The Local Government Board have issued model bye-laws for the regulation of slaughter-houses. As to the confirmation of these bye-laws, see 47 Vict. c. 12, *ante*, p. 474.

Appendix.

yards, and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such bye-laws; Provided that no such penalty exceed for any one offence the sum of five pounds, and in the case of a continuing nuisance the sum of ten shillings for every day during which such nuisance shall be continued after the conviction for the first offence.

CXXXIX. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the bye-laws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding two months the license granted to such person under this or the special Act, or, in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding two months the slaughtering of cattle therein; and such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the license granted under this or the special Act revoked, or, if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein; and whenever the license of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid, the commissioners may refuse to grant any license whatever to the person whose license has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Justices may suspend or revoke licenses of slaughter-houses, &c., or forbid use of registered slaughter-houses, &c.

CXXX. Every person who during the period for which any such license is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such license relates, or otherwise uses such slaughter-house or knacker's yard, or allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding five pounds for such offence, and a further penalty of five pounds for every day on which any such offence is committed after the conviction for the first offence.

Penalty for slaughtering cattle during suspension of license, &c.

CXXXI. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butcher's meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons (g) and in case, upon such inspection and examination, such cattle, carcase, or part of a carcase, be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and such justice may adjudge the person to whom such cattle, carcase, or part of a carcase belongs, or in whose custody the same is found, to pay a penalty not exceeding ten pounds for every such animal or carcase, or part of a carcase, so found; and the owner or occupier of any building or place kept or used for the sale of butcher's meat, or for slaughtering cattle, and every other person who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal or carcase, or part of a carcase, so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding five pounds for each offence.

Officers may enter and inspect slaughter-houses, &c., and seize and destroy carcasses, &c., unfit for food.

* * * * *

(g) See also the Public Health Act, 1875, s. 116, *ante*, p. 136, and the Public Health Act, 1890, s. 28, *ante*, p. 582.

Appendix,

THE BATHS AND WASH-HOUSES ACT, 1847.

(10 & 11 VICT. CAP. 61.)(a)

An Act to amend the Act for the Establishment of Public Baths and Wash-houses.
[2nd July, 1847.]

[Preamble recites 9 & 10 Vict. c. 74.]

Construction. The recited Act, as amended by this Act, and this Act shall be construed and be carried into execution as one Act.

Interpretation. II. . . . The following words and expressions in the recited Act shall have in the said Act and this Act the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

"Parish ;" "Parish" shall mean not only every place having separate overseers of the poor, and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry : (b)

"Ratepayers ;" "Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish : (c)

"Vestry ;" "Vestry" shall mean not only a vestry as defined in the said Act, but also any body of persons, by whatsoever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry.

Acts of any person acting as Commissioner, &c., to be valid, notwithstanding disqualification, &c. III. . . . (d). And all acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any duty concerning his appointment to such office, be as valid and effectual as if he were duly qualified or there had not been any such defect or irregularity.

Incorporation of 8 & 9 Vict. c. 18, in part. IV. . . . The Lands Clauses Consolidation Act, 1845, (e) shall be incorporated with the recited Act and this Act : Provided always that the council and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Proportion of washing accommodation for labouring classes ; V. . . . The number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the washing tubs or troughs of any higher class, if but one, or of all the higher classes, if more than one, in the same building or buildings. (f)

charges for use of baths, &c. VII. . . . The council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing places provided under the recited Act and this Act respectively as they think fit not exceeding the charges mentioned in the schedule annexed to this Act.

SCHEDULE to which this Act refers.

Charges for the Baths and Wash-houses and open Bathing Places.

1. BATHS FOR THE LABOURING CLASSES.

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

(a) See 9 & 10 Vict. c. 74, ante, p. 846 ; 41 & 42 Vict. c. 14 ; and 45 & 46 Vict. c. 30, post.
(b) See note (d) to 9 & 10 Vict. c. 74, s. 2, ante, p. 846.
(c) These words do not require actual payment of the rates.
(d) The previous part of this section was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).
(e) Ante, p. 808.
(f) See as to baths, 9 & 10 Vict. c. 74, s. 36, ante, p. 853. Section 6 was repealed by the Statute Law Amendment Act, 1875, as also was section 8.

For one person above eight years old :

Cold bath, or cold shower-bath, any sum not exceeding ... One Penny.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding ... Two-pence.

For several children, not above eight years old, nor exceeding four, bathing together :

Cold bath, or cold shower-bath, any sum not exceeding ... Two-pence.

Warm bath, or warm shower-bath, or vapour bath, any sum not exceeding ... Four-pence.

Appendix.

2. BATHS OF ANY HIGHER CLASS.

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

3. WASH-HOUSES FOR THE LABOURING CLASSES.

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying :

For one hour only in any one day, any sum not exceeding ... One Penny.

For two hours together in any one day, any sum not exceeding ... Three-pence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

4. WASH-HOUSES OF ANY HIGHER CLASS.

Such charges as the council and the commissioners respectively think fit.

5. OPEN BATHING PLACES.

Where several persons bathe in the same water, for one person one halfpenny.(g)

THE CEMETERIES CLAUSES ACT, 1847.

(10 & 11 VICT. CAP. 65.)(h)

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Cemeteries. [9th July, 1847.]

This Act shall extend only to such cemeteries as shall be authorized by any Act of Incorporation Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorized thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act. with special Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows :— Interpretation.

II. The expression "the special Act" used in this Act shall be construed to mean "The special Act :"

(g) This charge is now increased to one penny, 41 Vict. c. 14, s. 14, *post*.

(h) This Act is incorporated with the Public Health (Interments) Act, 1879, *ante*, p. 465. The marginal notes are as printed in the second edition of the Statutes Revised.

Appendix.

"Prescribed :"

any Act which shall hereafter be passed authorizing the making of a cemetery, and with which this Act shall be incorporated ; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act ; and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used ; and the expression "the lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof ; and the expression "the company" shall mean the persons by the special Act authorized to construct the cemetery.

Interpretations
in this and the
special Act.

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Number :

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number :

Gender :

Words importing the masculine gender shall include females :

"Person :"

The word "person" shall include a corporation, whether aggregate or sole :

"Lands :"

The word "lands" shall include messuages, lands, and hereditaments of any tenure :

"The ceme-
tery :"

The expression "the cemetery" shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorized to be constructed :

"Month :"

The word "month" shall mean calendar month :

"Superior
courts :"

The expression "superior courts" shall mean Her Majesty's superior courts at *Westminster* as the case may require : (a)

"Oath :"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

"Established
Church :"

The expression "Established Church" shall mean the church of *England* as by law established : (a)

"County :"

The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town :

"Justice :"

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated ; and where any matter is authorized or required to be done by "two justices" the expression "two justices" shall be understood to mean two or more justices met and acting together : (b)

"Two justices :"

"Quarter
sessions :"

The expression "quarter sessions" shall mean the quarter sessions as defined by the special Act, or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace.

Citing the Act.

And with respect to citing this Act, or any part thereof, be it enacted as follows :—

Short title of
this Act.

IV. In citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Cemeteries Clauses Act, 1847."

Form in which
portions of this
Act may be
incorporated in
other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

(a) Words relating to Ireland only are here omitted.

(b) And see section 64, *post*, p. 906.

And with respect to the making of the cemetery, be it enacted as follows :—

Appendix.

Making of cemetery.

Taking of lands for purposes of special Act to be subject to the provisions of this and the Lands Clauses Acts.

VI. Where by the special Act the company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845,^(b) and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorized, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845,^(c) for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

VII. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the special Act or the schedule thereto, the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate as if such omission, mis-statement, or wrong description had not been made.

Correction of errors and omissions in special Act.

VIII. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Certified copies of alterations, &c., to be evidence.

IX. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorized by this^(d) or the special Act, or any Act incorporated.

Land used for burials not to be used for other than authorised purposes.

X. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or, if no distance be prescribed, two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house.^(e)

Cemetery not to be within a certain distance of houses.

XI. The company upon any land which by the special Act they are authorized to use for the purposes of the cemetery may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit.^(f)

Company may build chapels, and lay out their grounds.

XII. The company upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

Company may make or widen roads to cemetery.

(c) *Ante*, p. 808.

(d) See section 40, *post*. See also *Reg. v. Twiss*, L. R. 4 Q. B. 407; 38 L. J. Q. B. 228; 20 L. T. (N.S.) 522; 17 W. R. 765; 33 J. P. 516; *Campbell v. Liverpool Corporation*, L. R. 9 Eq. 579; *Harper v. Forbes*, 5 Jur. (N.S.) 275.

(e) This distance is to be calculated from the house itself, not from the curtilage. *Wright v. Wallasey Local Board*, 18 Q. B. D. 783; 56 L. J. Q. B. 259; 3 T. L. R. 525. See also section 9 of the Burials Act, 1855 (18 & 19 Vict. c. 128).

(f) See section 25, *post*.

Appendix.

No road to be widened without consent.

XIII. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law.

Improvement of roads.

XIV. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same.

Cemetery to be enclosed and fenced.

XV. Every part of the cemetery shall be enclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed by substantial walls or iron railings of the height of eight feet at least.

Cemetery, &c., to be kept in repair.

XVI. The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.(a)

Compensation for damage.

XVII. Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.(b)

Prevention of nuisances.

And with respect to preventing nuisance from the cemetery, be it enacted as follows :—

Power to make sewers, drains, &c., in and about the cemetery.

XVIII. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may, from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

Provisions of 10 & 11 Vict. c. 17, incorporated with this Act.

XIX. When any street or road or sewer shall be opened, with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847,(c) with respect to breaking up streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer.

Penalty on company for allowing water to be fouled.

XX. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence, the sum of fifty pounds.(d)

By whom, how, and within what time, such penalty to be recovered.

XXI. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter in any of the superior courts, by action of debt or on the case : Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

Damages for a daily penalty during the continuance of the offence, after notice, may be recovered.

XXII. In addition to the said penalty of fifty pounds (and whether such penalty is recovered or not) any person having right to use the water fouled by such offensive matter may sue the company in an action on the case in any court of competent jurisdiction for any damage specially sustained by him by reason of the water being so fouled ; or if no special damage be alleged, for the sum of ten pounds for each day

(a) The company are, therefore, occupiers and rateable. *Reg. v. St. Mary Abbots, Kensington*, 12 A. & E. 824 ; 10 L. J. M. C. 25 ; and see *Reg. v. Abney Park Cemetery Company*, L. R. 8 Q. B. 515 ; 42 L. J. M. C. 124 ; 29 L. T. (N.S.) 174 ; 38 J. P. 822.

(b) See also *Crowhurst v. Amersham Burial Board*, 4 Ex. D. 5 ; 45 L. J. Ex. 109 ; 39 L. T. (N.S.) 35.

(c) *Ante*, p. 876.

(d) See also *Ballard v. Tomlinson*, 29 Ch. D. 115 ; 54 L. J. Ch. 454 ; 52 L. T. (N.S.) 942 ; 33 W. R. 533.

during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person.

Appendix.

And with respect to burials in the cemetery, be it enacted as follows :—

Burials.

XXIII. The bishop of the diocese in which the cemetery is situated may, on the application of the company, consecrate any portion of the cemetery set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

Part of cemetery may be set apart and consecrated for burial according to rites of Established Church.

XXIV. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery.(e)

Consecrated and unconsecrated ground to be defined.

XXV. The company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

Chapel for the Established Church service.

XXVI. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church.(f)

Removal of bodies from consecrated ground.

XXVII. The company shall, from time to time, with the approval of the bishop of the diocese in which the cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery; and such chaplain shall be licensed by and be subject to the jurisdiction of the said bishop, and the said bishop shall have power to revoke any such license, and to remove such chaplain for any cause which appears to him reasonable.

Appointment and licensing of chaplain.

XXVIII. The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery(g) which are entitled to be buried in consecrated ground according to the rites and usages of the Established Church.

Burial service over bodies entitled to burial in consecrated ground.

XXIX. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain, with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery.

Other clergymen of the Established Church may be allowed to officiate.

XXX. The company, out of the moneys to be received by virtue of this and the special Act, shall allow to the chaplain of the cemetery for the time being such a stipend as is approved of by the bishop of the diocese in which the cemetery is situated, which shall be payable, by equal moieties, on the twenty-first day of *March* and the twenty-ninth day of *September* in each year; and if any chaplain die, resign, or be removed or appointed, in the interval between the half-yearly days of payment, the company shall pay to him, or his executors or administrators, a part only of the

Company to pay the chaplain a stipend approved by the bishop.

(e) No wall or fence between the consecrated and unconsecrated portions is necessary if sufficient boundary marks of iron or stone be maintained. Burial Act, 1857 (20 & 21 Vict. c. 81, s. 11). See also *Reg. v. Tiverton*, 13 L. T. (O.S.) 233.

(f) See also section 25 of the Burial Act, 1857 (20 & 21 Vict. c. 81). *St. Helen's, Bishopsgate (Rector) v. Parishioners* [1892], P. 259; *St. Mary-at-Hill v. Parishioners* [1892], P. 394; 56 J. P. 824; *St. Botolph Without, Aldgate (Vicar) v. Parishioners* (No. 1) [1892], P. 161.

(g) A cemetery provided by a local authority is not within the provisions of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), for it is not "vested in any burial board or provided under any Act relating to the burial of the dead, in which the parishioners of any parish or ecclesiastical district have rights of burial" within the meaning of section 1 of that Act. Consequently the chaplain cannot lawfully officiate with the service according to the rites of the Church of England in the unconsecrated part of the cemetery or in any building thereon, under 43 & 44 Vict. c. 41, s. 12.

Appendix.

half-yearly payment of the stipend proportioned to the time during which he shall have been the chaplain since the last preceding day of payment.

Stipend may be recovered by action at law.

XXXI. If the stipend of the said chaplain, or any part thereof, be not paid to the chaplain entitled to receive the same, or to the executors or administrators of a deceased chaplain, for the space of thirty days next after any of the days of payment whereon the same ought to be paid, such chaplain, or his executors or administrators, may recover the same, with full costs of suit, against the company, by action of debt or upon the case in any court of competent jurisdiction.

Register of burials in the consecrated portion.

XXXII. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in *England*; (a) and such register books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof, shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese.

Registers to be subject to the regulations of 6 & 7 Will. 4, c. 86, as to searches, &c.

XXXIII. The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of the reign of His late Majesty, intituled *An Act for registering the Births, Deaths, and Marriages in England*, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Appointment of clerk for consecrated part of the cemetery.

XXXIV. The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the service for burials in the consecrated part of the cemetery, and allow to such clerk such stipend as they think proper out of the moneys to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

Burial of persons not members of the Established Church.

XXXV. The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint.

Any burial service may be performed in chapels on unconsecrated part.

XXXVI. The company may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorised by law to officiate in such church or congregation or recognized as such by the religious community or society to which he belongs.

Power to appoint gravediggers, &c.

XXXVII. The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit out of the moneys to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure. (b)

Regulations.

XXXVIII. The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels.

XXXIX. No body shall be buried in any vault under any chapel of the cemetery or within fifteen feet of the outer wall of any such chapel.

Exclusive rights of burial.

And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the

XL. The company may set apart such parts of the cemetery as they think fit for

(a) That is, under 52 Geo. 3, c. 146. See "Brooke Little's Law of Burials," 2nd edit., p. 321.

(b) A bye-law of a cemetery prohibited a discharged servant from being admitted to the cemetery except by special leave of the directors, and it authorised his removal. D., the owner of a grave, employed W., a discharged servant, to do some work. It was held that there was nothing unreasonable in the bye-law, and that W. was rightly excluded by force from the cemetery. *Martin v. Wyatt*, 48 J. P. 215.

the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.(e)

Appendix.

cemetery set apart for grant of exclusive rights of burial.

XL. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Plan of parts set apart for grant of exclusive rights, and book of reference thereto, to be kept.

XLII. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet, or gravestone, may be made in the Form in the Schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them (*sic*).

Grant of exclusive right, &c., may be according to form in schedule.

XLIII. A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling to the clerk of the company.

Register of grants to be kept.

XLIV. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will.(d)

Rights of burial, &c., may be assigned or bequeathed.

XLV. Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the Form in the Schedule to this Act annexed or to the like effect.

Form of assignments.

XLVI. Every such assignment shall, within six months after the execution thereof, if executed in *Great Britain* or within six months after the arrival thereof in *Great Britain* if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial no right of burial shall be acquired under any such memorial(e); and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Assignments to be registered.

(c) The sale of an exclusive right of burial under 15 & 16 Vict. c. 83, s. 33, was held not to deprive them of the general control of the burial ground under section 33, or to prevent their removing a wreath covered with a glass shade and wire frame which had been placed on the grave. *McGough v. Lancaster Burial Board*, 21 Q. B. D. 323; 57 L. J. Q. B. 568; 36 W. R. 822; 52 J. P. 740.

(d) A burial company having erected a memorial stone, removed and sold it because it was not paid for. It was held that the proper remedy of the company was to sue for the money, and that they had no right to remove the stone. *Sims v. London Necropolis Company*, 1 T. L. R. 584.

(e) (*Sic*) *Quære*, a mistake for "assignment."

Appendix.

Probates of wills disposing of rights of burial to be registered.

XLVII. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant, and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Burials in places where exclusive rights have been granted.

XLVIII. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

No grant to give right in consecrated ground, &c., to persons not entitled to be buried according to rites of Established Church.

XLIX. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Established Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

Power to remove monuments erected without authority.

L. The company may take down and remove any gravestone, monument, tablet, or monumental inscription which shall have been placed within the cemetery without their authority.(a)

Rights of bishop to object to monumental inscriptions in consecrated part of cemetery.

LI. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law(b) has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

Payments to incumbents of parishes.

And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows:—

Payments to incumbents of parishes from which bodies are brought.

LII. The company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial such sums, if any, as shall be prescribed for that purpose in the special Act.(c)

Accounts of interments in consecrated part of cemetery.

LIII. For ascertaining the amount of the payments, if any, to be made to the incumbents of the several parishes or districts aforesaid, the company shall cause books to be kept, and entries to be made therein of the names of all persons whose bodies are buried within the consecrated part of the cemetery, and the names of the parishes or districts from which such bodies respectively have been removed, and the manner of their burial within the cemetery (distinguishing whether in a place of exclusive burial or otherwise), with the date of such burial; and such books shall be at all reasonable times open to the inspection of the incumbents for the time being of the said several parishes or districts, or any person employed by them, without fee or reward.

Account of payments due to incumbents of parishes.

LIV. The company shall, on the twenty-fifth day of *March* and twenty-ninth day of *September* in each year, or within one month after each of the said days deliver to

(a) If the right be granted to the grantee and his heirs, it is doubtful whether this section would apply. See *Matthews v. Jeffery*, 6 Q. B. D. 290; 50 L. J. Q. B. 164; 43 L. T. (N.S.) 796; 29 W. R. 282; 45 J. P. 361. An exclusive right of burial is an easement, and can only be granted by deed. *Bryan v. Whistler*, 8 B. & C. 288; 2 M. & R. 318. See also the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 33, and *Ashby v. Harris*, L. R. 3 C. P. 523; 37 L. J. M. C. 164; 18 L. T. (N.S.) 719; 16 W. R. 867; *McGough v. Lancaster, ante*, p. 903.

(b) See *Maidman v. Malpas*, 1 Hagg. Cons. 205; *Harper v. Forbes*, 5 Jur. (N.S.) 275; *Ex parte Medwin*, 1 E. & B. 609; *Kcet v. Smith*, 1 P. D. 73; 45 L. J. P. C. 10; 33 L. T. (N.S.) 794; 24 W. R. 375.

(c) Where a cemetery has been provided by a local authority under the Public Health (Interments) Act, 1879, *ante*, p. 465, that Act is the special Act (section 3), and in such case the special Act prescribes no sums as payable to incumbents. In such a cemetery sections 52 to 57 are wholly inapplicable.

the person who is the incumbent of any parish or ecclesiastical district on that day, or to his executors or administrators, on demand made within the said month, an account of the sums, if any, payable in respect of bodies removed for burial within the consecrated part of the cemetery as aforesaid from such parish or ecclesiastical district during the half-year next preceding the said twenty-fifth day of *March* or the twenty-ninth day of *September*, as the case may be.

Appendix.

LV. The sums payable by virtue of the special Act shall be paid half-yearly on the twenty-fifth day of *March* and the twenty-ninth day of *September*, or within one month afterwards, to the persons who are the incumbents of the parishes or ecclesiastical districts in respect of which the same are payable on such twenty-fifth day of *March* and twenty-ninth day of *September* respectively, or the executors or administrators of such incumbents; (that is to say,) such sums as accrue between the twenty-ninth day of *September* and the twentieth-fifth day of *March* following shall be paid to the person who is the incumbent on the twenty-fifth day of *March*, and such sums as accrue between the twenty-fifth day of *March* and the twenty-ninth day of *September* following shall be paid to the person who is the incumbent on the twenty-ninth of *September*; and if any such sums be not paid to the party entitled to receive the same within the period hereinbefore limited for the payment thereof, such party may recover the same, with full costs, by action of debt or on the case, in any court having competent jurisdiction.

Payments to be made to incumbents of parishes half-yearly.

LVI. If any incumbent of any parish or district in respect of which sums are payable by the company by virtue of the special Act ceases to be incumbent, by cession, death, or otherwise, between the said two half-yearly days of payment, such incumbent shall be entitled to receive so much of the sum payable at the half-yearly day which happens next after he ceases to be incumbent as has accrued from the last preceding half-yearly day, or from the time when such incumbent became first entitled to receive the fruits of his living, as the case may require, up to the day at which he ceased to be incumbent, and the incumbent of any parish or district who receives from the company any sum to a part of which any preceding incumbent is entitled under the provisions herein contained shall pay such part to him, his executors or administrators, accordingly; and the company shall not be answerable to any person, other than the actual incumbent for the time being, for the payment of any sums by virtue of this or the special Act.

Apportioned payments to incumbents.

LVII. The company shall, on the burial of every body within the consecrated part of the cemetery, except where the body is buried at the expense of any parish or ecclesiastical district, or union of parishes for the relief of the poor, pay to the parish clerk of the parish or ecclesiastical district from which such body has been removed for burial, if he held the office of parish clerk of such parish or ecclesiastical district at the time of the passing of the special Act, but not otherwise, such sum, if any, as shall be prescribed for that purpose in the special Act.

Prescribed sum payable to parish clerk.

And with respect to the protection of the cemetery, be it enacted as follows:—

Protection of the cemetery.

LVIII. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty for damaging the cemetery.

LIX. Every person who shall play at any game or sport, or discharge firearms, save at a military funeral in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Disturbances and nuisances in cemetery.

LX. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt and expenditure of all moneys levied by virtue of this or the special Act for the year ending on the thirty-first day of *December*, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the

Annual accounts.

Appendix.

clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds.

LXI.(a)

Recovery of damages and penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows :—

Railways
Clauses Consoli-
dation Act,
8 & 9 Vict. c. 20,
incorporated as
to damages, &c.

LXII. The clauses of the Railways Clauses Consolidation Act, 1845,(b) with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively.(c)

* * * * *

Powers of
justices.

LXIV. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

False evidence.

LXV. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to special Act.

And with respect to affording access to the special Act, be it enacted as follows :—

Copies of special
Act to be open
to inspection.

LXVI. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act so printed as aforesaid; and the said clerk of the peace shall receive and he and the company respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled *An Act to compel Clerks of the Peace for Counties and other persons to take the custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*(d)

7 Will. 4 & 1
Vict. c. 83.

Penalty on
company failing
to keep or
deposit such
copies.

LXVII. If the company fail to keep or deposit any of the said copies of the special Act as hereinbefore mentioned they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Saving as to
future Acts.

LXVIII. Nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

* * * * *

(a) This section was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 68). See now the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), *ante*, p. 692.

(b) *Ante*, p. 843.

(c) Section 63 related only to penalties in Ireland, and was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(d) This Act is now called the Parliamentary Documents Deposit Act, 1857. As to charging costs of promoting or opposing bill on borough fund, see the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), *post*.

SCHEDULES to which the foregoing Act refers.

Appendix.

Form of Grant of Right of Burial.

By virtue of [*here name the special Act*] we [*here state the name or description of the company*], in consideration of the sum of _____ to us paid by _____ of _____ do hereby grant unto the said _____ the exclusive right of burial [*or the right of burying _____ bodies, as the case may be*] or the right of placing a monument, tablet, or gravestone in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial add "numbered _____ on the plan of the cemetery made in pursuance of the said Act"*], to hold the same to the said _____ in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal [*or under our hands and seals, as the case may be*] this _____ day of _____ in the year of our Lord _____.

Form of Assignment of Right of Burial.

I, A. B., of _____ in consideration of the sum of _____ paid to me by C. D., of _____ do hereby assign unto the said C. D., the exclusive right of burial in [*here describe the place*], and numbered _____ on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or unto A. B., of _____*] in perpetuity [*or or as the case may be*] by [*here state the name of the company*] by a deed of grant bearing date the _____ day of _____ and all my estate, title, and interest therein, to hold the same unto the said C. D. in perpetuity [*or, as the case may be, for the remainder of the period for which the same was granted by the said company*] subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal this _____ day of _____.

THE TOWN POLICE CLAUSES ACT, 1847.

(10 & 11 VICT. CAP. 89.)*(c)*

An Act for consolidating in one Act certain provisions usually contained in Acts for regulating the Police of Towns. [22nd July, 1847.]

This Act shall extend only to such towns or districts in *England or Ireland* as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act and be construed therewith as forming one Act. Incorporation with special Act.

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows:— Interpretation.

II. The expression "the special Act" used in this Act shall be construed to mean "The special Act;" and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed

(c) For the incorporation of this Act with the Public Health Act, 1875, see section 171 of that Act, *ante*, p. 235. The marginal notes to this Act are as printed in the second edition of the Statutes Revised. This Act is amended by 52 & 53 Vict. c. 14, *post*, which extends to omnibuses the provision of certain sections relating to hackney carriages.

Appendix.

'The commissioners :'

for that purpose in the special Act" had been used ; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof.

Interpretations in this and the special Act :

III. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say.)

Number :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Gender :

Words importing the masculine gender shall include females :

"Person :"

The word "person" shall include a corporation, whether aggregate or sole :

"Lands :"

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure :

"Street :"

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare, or public passage within the limits of the special Act ; (a)

"Month :"

The word "month" shall mean calendar month :

"Superior courts :"

The expression "superior courts" shall mean Her Majesty's superior courts of record at *Westminster*

"Oath :"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

"County :"

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town :

"Justice :"

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the recognition of any such justice arises ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together :

"Two justices :"

"Quarter sessions :"

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined, shall mean the general or quarter sessions of the peace which shall be held in or at the place nearest to the district comprised within the special Act for the county in which such district or some part thereof is situated, or for some division of such county having a separate commission of the peace :

"Cattle :"

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

Citing the Act.

Short title of this Act,

And with respect to citing this Act, or any part thereof, be it enacted as follows :—

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "the Town Police Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act ; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

Obstructions and nuisances.

Power to make orders for pre-

And with respect to obstructions and nuisances in the streets, be it enacted as follows :—(b)

XXI. The commissioners may from time to time make orders for the route to be

(a) It appears from *Curtis v. Embery*, L. R. 7 Ex. 369 ; 42 L. J. M. C. 39 ; 21 W. R. 143, that in this Act the definition here given must be adopted.

See as to the meaning of this term *Maddock v. Wallasey Local Board*, ante, p. 757 ; *Heatherton v. Watson*, 7 Ct. of Sess. Cas., 4th series (J. C.), 5. These cases decide that the seashore or foreshore is not a street.

(b) It is to be observed that many of the offences mentioned in the following sections are punishable under the provisions of the Highway Acts and the Vagrant Act, which should, therefore, be referred to in further illustration of the meaning of these sections.

observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed,^(c) and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Appendix.

venting obstructions in the streets during public processions, &c.

Power to regulate the route of persons driving stage carriages, &c., near places of worship during hours of Divine service.

Power to stage carriages to deviate from route under order of commissioners.

Power to impound stray cattle.

Power to sell cattle impounded for payment of penalty and expenses after notice or advertisement.

Persons guilty of pound-breach to be committed for three months.

XXII. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive any cart or carriage or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of Divine service on *Sunday, Christmas Day, Good Friday*, or any day appointed for a public fast or thanksgiving, and any orders so made shall be printed, and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

XXIII. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his license which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners.^(d)

XXIV. If any cattle^(e) be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle.^(f)

XXV. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper, or other person appointed by the commissioners for that purpose, may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

XXVI. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months.

^(c) See the qualifications in section 28, *post*, and *Fox v. Palmer*, 22 J. P. 449, in regard to an obstruction by running horses in the access to a market.

^(d) As no stage carriages are now licensed under the general law, this section is now inoperative.

^(e) Compare 6 & 7 Vict. c. 30, s. 1, as to pound-breach, and see *Reg. v. Gee*, 1 T. L. R. 388, decided with reference to that Act.

^(f) The 12 & 13 Vict. c. 92, and 17 & 18 Vict. c. 60, require that persons impounding animals shall supply them with a sufficient quantity of fit and proper food, and may recover the cost from the owner, or may sell them to recompense themselves the cost, paying the overplus, if any, to the owner. But these Acts do not apply to the keeper of the pound. *Dargon v. Davies*, 41 J. P. 463.

Appendix.

Power to provide a pound.

Penalty on persons committing any of the offences herein named.

XXVII. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound, when made, shall be kept in repair by the commissioners.

XXVIII. Every person who in any street, (a) to the obstruction, annoyance, or danger of the residents or passengers, (b) commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable (c) or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence; (that is to say,)

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident) or cleans, dresses, exercises, (d) trains or breaks, or turns loose any horse or animal, (e) or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal: (f)

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

(a) See the definition in section 3, *ante*, p. 908, and compare the definition in the Public Health Act, 1875, s. 4, *ante*, p. 6.

(b) These words govern the whole of the section. *Stinson v. Browning*, L. R. 1 C. P. 321; 35 L. J. M. C. 152; 12 Jur. (N.S.) 262; 13 L. T. (N.S.) 799; 14 W. R. 395; 1 H. & R. 263; 30 J. P. 312; *Hill v. Somerset*, 51 J. P. 356. But in proceedings for an offence it is not necessary to call persons who have been actually annoyed, &c. *Wooley v. Corbishley*, 24 J. P. 773; *Reed v. Perrett*, *ante*, p. 890; *Reg. v. Fermanagh JJ.*, 14 L. R. Ir. 50; *McDonald v. White*, 9 Ct. of Sess. Cas., 4th series, p. 43; *Black v. Simpson*, 5 Couper, Ct. of Justiciary Cases (Scotland), p. 212; *Simon v. Read*, 4 Coup. 221; *Leish v. Galloway*, 12 Ct. of Sess. Cas., 4th series (J. C.), 5. See, however, *Stanley v. Ferndale*, 56 J. P. 709, where a conviction under a local Act was quashed on the ground that there was no evidence besides that of the constable that there was any annoyance. But where a bye-law of a borough provided that if any person should make any noise in the streets to the annoyance of the inhabitants he should be guilty of an offence, upon a summons against a newspaper boy for shouting out the name of a newspaper incessantly for six minutes, &c., it was held that it was not necessary to prove that more than one inhabitant had in fact been annoyed thereby. *Innes v. Newman* [1894], 2 Q. B. 292; 63 L. J. M. C. 198; 70 L. T. (N.S.) 689; 42 W. R. 573; 58 J. P. 543.

(c) This term includes any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority. Public Health Act, 1875, s. 171, *ante*, p. 235. Query, whether the police who arrest an offender against this section require an authority to prosecute under section 253 of the Public Health Act, *ante*, p. 336. See 46 J. P. 237. The Home Office think not. 57 J. P. 494.

(d) See *Heatherton v. Watson*, *ante*, p. 908.

(e) The owner of land adjoining a highway claiming the herbage on the side of the latter put his cattle thereon, and it was held that this was not turning an animal loose thereon. As to animals straying on highways, see *Sherborn v. Wells*, 3 B. & S. 784; 9 Jur. (N.S.) 1104; 32 L. J. M. C. 179; 8 L. T. (N.S.) 274; 11 W. R. 594; 27 J. P. 566. See also the provisions of the Highway Acts as to animals straying upon highways, 5 & 6 Will. 4, c. 50, s. 74, and 27 & 28 Vict. c. 101, s. 25, and the cases decided on these sections. *Morris v. Jeffries*, L. R. 1 Q. B. 261; 35 L. J. M. C. 143; 13 L. T. (N.S.) 629; 14 W. R. 310; 30 J. P. 198; *Lawrence v. King*, L. R. 3 Q. B. 345; 37 L. J. M. C. 8; 18 L. T. (N.S.) 356; 16 W. R. 966; 9 B. & S. 325; 32 J. P. 310; *Golding v. Stocking*, L. R. 4 Q. B. 516; 38 L. J. M. C. 122; 20 L. T. (N.S.) 479; 17 W. R. 722; 10 B. & S. 348; 33 J. P. 566; 33 J. P. 278; *Bothamley v. Danby*, 24 L. T. (N.S.) 656. See also the provisions of this Act as to impounding animals, sections 24—27, *ante*, p. 809. As to the liability of a person for damage caused by animals while being driven along a street, see *Phillips v. Nicoll*, 11 Ct. of Sess. Cas. 4th series, 592; *Tillett v. Ward*, 10 Q. B. D. 17; 52 L. J. Q. B. 61; 47 L. T. (N.S.) 546; 31 W. R. 197; 47 J. P. 438.

(f) See also 34 & 35 Vict. c. 56, as to dogs at large in the streets. As to the proof of *scienter*, see *Worth v. Gilling*, L. R. 2 C. P. 1; *Baldwin v. Casella*, L. R. 7 Ex. 325; 41 L. J. Ex. 167; 26 L. T. (N.S.) 707; 21 W. R. 16; *Applebee v. Percy*, L. R. 9 C. P. 647; 38 J. P. 567; *Parker v. Walsh*, 1 T. L. R. 583; *Sanders v. Teape*, 51 L. T. (N.S.) 263; 48 J. P. 757.

Appendix.

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice :

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which, for the public safety or other reasonable cause, ought to be killed on the spot : (g)

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, (h) or who, in passing any other carriage, does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care :

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons, who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle : (i)

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught and burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means, (k) wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare : (l)

(g) See the Injured Animals Act, 1894 (57 & 58 Vict. c. 22), empowering the police to cause injured animals to be slaughtered, without the consent of the owner, after obtaining a veterinary certificate ; and making the expenses recoverable from the owner as a civil debt.

(h) There is not at common law any such rule of the road as to make the left always the proper side. See *Pinegan v. London and North-Western Railway Company*, 53 J. P. 663 ; 5 T. L. R. 598.

(i) See also 24 & 25 Vict. c. 100, s. 35. A bicycle is a carriage within this provision. *Taylor v. Goodwin*, 4 Q. B. D. 228 ; 48 L. J. M. C. 104 ; 40 L. T. (N.S.) 458 ; 27 W. R. 489 ; 43 J. P. 653 ; *McKee v. Magrath*, 30 L. R. Ir. 41. Note that this clause, unlike 5 & 6 Will. 4, c. 50, s. 78, includes riding as well as driving furiously. See *Williams v. Evans*, 1 Ex. D. 277 ; 35 L. T. (N.S.) 864 ; 41 J. P. 151. See, further, as to bicycles and tricycles, 51 & 52 Vict. c. 41, s. 85, *ante*, p. 523.

(k) Three defendants were convicted by the defendant justices, under this section, for obstructing passengers in the public street and unlawfully preventing persons passing there. It appeared by the evidence of police constable that the three defendants were standing, with three or four other persons on the pavement, blocking up the same. Several persons had to leave the footpath and go into the road in order to pass. The constable spoke to the defendants, and asked them to move off. They then walked up the street, all three abreast, causing passengers who met them to leave the footpath and go into the road. It was held that the conviction was wrong, and could not be sustained. *Reg. v. Long*, 59 L. T. 33 ; 52 J. P. 630 ; and see *Reg. v. Williams*, 55 J. P. 406.

A shopkeeper in a borough placed goods upon the pavement in front of his shop for sale. Upon being summoned under this section for obstructing the footway, he contended that he *bonâ fide* claimed the right to place his goods there. The justices considered that their jurisdiction was ousted, but stated a case. It was held that the justices ought to determine whether the land on which the goods were placed was part of the public highway or not, and that no question of title was involved, and that their jurisdiction was not ousted. *Leicester Urban Sanitary Authority v. Holland*, 57 L. J. M. C. 75 ; 52 J. P. 788.

(l) When an undoubted obstruction is proved, the plaintiff need not call persons to prove that they were obstructed, and, on the other hand, no evidence can be called to prove that they were not obstructed. See *Reed v. Perrett*, *ante*, p. 890 ; *McDonald v. White*, *ante*, p. 910. A person who had a caravan for the sale of goods stationed it in a market place

Appendix.

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :
 Every person who leads or drives any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :
 Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard on any footway,^(a) or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless

near what was described as a footpath, over which a crowd collected and obstructed the passage :—Held, that he was not guilty of an offence against this clause. *Ball v. Ward*, 33 L. T. (N.S.) 170 ; 40 J. P. 213. An obstruction is not caused by persons stopping and talking in the street, unless it is done wilfully and pertinaciously. *Wemyss v. Black*, 8 Ct. of Sess. Cas. (Justiciary), 4th series, 25. An indictable obstruction may be caused by attracting a crowd by means of pictures, &c., in shop windows. *Reg. v. Carlile*, 6 C. & P. 636 ; and see 46 J. P. 19. A street preacher who collected a crowd in a highway was held rightly convicted under 5 & 6 Will. 4, c. 50, s. 72, though there was room outside the crowd for foot passengers and vehicles to pass and repass. *Homer v. Cadman*, 55 L. J. M. C. 110 ; 54 L. T. (N.S.) 421 ; 34 W. R. 413 ; 50 J. P. 454 ; 10 Cox C. C. 51. And see *Back v. Holmes*, 57 L. J. M. C. 37 ; 56 L. T. (N.S.) 713 ; 51 J. P. 693 ; 16 Cox C. C. 263 ; 3 T. L. R. 564 ; *Ex parte Lewis*, 21 Q. B. D. 191 ; 57 L. J. M. C. 108 ; 59 L. T. (N.S.) 338 ; 37 W. R. 13 ; 52 J. P. 773. A person who by carrying on a theatre causes a crowd to assemble and obstruct the highway thereby creating a nuisance to private adjoining owners, is answerable for the obstruction if it be the necessary result of his acts, even though it be not his actual object. There is no difference of principle in this respect between outdoor and indoor entertainments. *Barber v. Penley* [1893], 2 Ch. 447 ; 62 L. J. Ch. 623 ; 68 L. T. 662 ; 3 R. 489 ; 10 T. L. R. 359, and see *Wagstaffe v. Edison*, 10 T. L. R. 80. A person riding a bicycle on a footpath by the side of a public road was held rightly convicted under 13 & 14 Vict. c. 92, s. 13, of obstructing the free passage of foot passengers, although no evidence was produced of any foot passengers having been actually obstructed. *McKee v. Magrath*, 30 L. R. Ir. 41, see also *Reg. v. Simpson*, "The Times," January 23, 1895. Where there is a public way, though it may only be a bridleway or footway, the public are entitled to use the full width of it, though it may be a private way for carriages. *Pullen v. Daffall*, 64 L. T. (N.S.) 134 ; W. N. (1891), 39. Persons using a traction engine and trucks on a highway six hours daily for seven weeks cannot be found guilty on indictment for a nuisance, unless they create a substantial obstruction and occasion delay and inconvenience to the public substantially greater than would have been caused by horses and carts. *Reg. v. Chittenden*, 15 Cox C. C. 725. This clause will not apply to a place like a mews, which is not a street, and is only dedicated to the public subject to certain restrictions arising from its use. *Vestry of Chelsea v. Stoddard*, 43 J. P. 782. The cases decided with reference to the Highway Act, 5 & 6 Will. 4, c. 50, s. 72, should be referred to in illustration of this clause. As to claims to erect booths, &c., on highways during a fair, see *Simpson v. Wells*, 26 L. T. (N.S.) 163 ; a claim by an innkeeper to allow his guest's carriage to remain in the highway, *Gerring v. Barfield*, 28 J. P. 615 ; holding a fair on a highway, *Elwood v. Bullock*, 6 Q. B. 383 ; *Reg. v. Smith*, 4 Esp. 109. To allow trees to grow over a highway is not a wilful obstruction. *Walker v. Horner*, 1 Q. B. D. 4 ; 39 J. P. 773. But any unreasonable and unnecessary use of a highway is an obstruction, e.g., leaving a horse-van and ploughing gear standing by the side of a highway, *Harris v. Mobbs*, 3 Ex. D. 268 ; 39 L. T. (N.S.) 164 ; 27 W. R. 154 ; or leaving a roller so as to frighten horses, *Wilkins v. Day*, 12 Q. B. D. 110 ; 49 L. T. (N.S.) 399 ; 32 W. R. 123 ; 48 J. P. 6 ; leaving a heap of earth and refuse by the side of a highway, so as to frighten horses, *Brown v. Eastern and Midlands Railway Company*, 22 Q. B. D. 391 ; 58 L. J. Q. B. 22 ; 60 L. T. (N.S.) 266 ; 53 J. P. 342 ; as to obstructions caused by the erection of barbed wire fences by the side of a highway, see 56 & 57 Vict. c. 32, *post* ; *Stewart v. Wright*, 9 T. L. R. 480 ; *Collen v. Ellis*, 32 L. R. Ir. 491. As to the liability of a highway surveyor for leaving heaps of stones on a highway, see *Hardcastle v. Bielby* and the other cases cited, *ante*, p. 160.

As to the liability of a landowner whose soil slips from the banks upon the highway, see *Gully v. Smith*, 12 Q. B. D. 121 ; 53 L. J. M. C. 35 ; 48 J. P. 309.

(a) There is sometimes a strip of land between the footway and the carriageway which is not dedicated to the public as part of the street. This clause would not affect the right to place goods, &c., upon it. See *Le Neve v. Vestry of Mile End Old Town*, *ante*, p. 14 ; *Reg. v. Wigan, JJ.*, 43 J. P. 220 ; *Jones v. Matthews*, 1 T. L. R. 482 ; *Hitchman v. Watt*, 58 J. P. 720. But in general, if a person asserts the right to obstruct the way by virtue of a qualified dedication he must prove it. See *Spice v. Peacock*, 39 J. P. 581 ; *Whittaker v. Rhodes*, 46 J. P. 182. But in such cases it is for the justices to determine whether or not the place is a street. *Reg. v. Young*, 52 L. J. M. C. 55 ; 47 J. P. 519 ; *Leicester Sanitary Authority v. Holland*, *ante*, p. 911. As to projections causing inconvenience to passengers, see the Towns Improvement Clauses Act, 1847, s. 69, *ante*, p. 889.

such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Appendix.

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandize, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway : (b)

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution : (c)

Every person who wilfully and indecently exposes his person : (d)

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language : (e)

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any fire-work : (f)

Every person who wilfully and *wantonly* disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door, (g) or who wilfully and unlawfully extinguishes the light of any lamp ;

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers) : (h)

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building

(b) As to the right of the occupier of premises to have free access to the highway for his goods, even though in taking these across the footway he injures it, see *St. Mary, Newington (Vestry of) v. Jacobs*, L. R. 7 Q. B. 47 ; 41 L. J. M. C. 72 ; 25 L. T. (N.S.) 800 ; 20 W. R. 249 ; 36 J. P. 119. See also *Le Neve v. Mile End Old Town*, *supra*. Sometimes, however, a local Act forbids certain acts which interrupt the use of a footway, *e.g.*, unloading coal during certain hours. See *Fletcher v. Fields* [1891], 1 Q. B. 790 ; 64 L. T. (N.S.) 472 ; 60 L. J. M. C. 102 ; 39 W. R. 155 ; 55 J. P. 502.

(c) A similar clause in a Scotch Act was held not to apply to the case of a prostitute accosting men from the window of a house. *Ford v. Linton*, 6 Ct. of Sess. Cas. 4th series (J. C.), 49.

(d) Note that the offence here described must be committed in a street. But the offence may be the subject of indictment, though not committed in a public place. *Reg. v. Wellard*, 14 Q. B. D. 63 ; 54 L. J. M. C. 14 ; 51 L. T. (N.S.) 604 ; 33 W. R. 156 ; 49 J. P. 296 ; 15 Cox C. C. 559.

(e) Compare the provisions of the Vagrant Act, 5 Geo. 4, c. 83, ss. 3, 4. The 20 & 21 Vict. c. 83, contains other provisions to prevent the sale of obscene books, pictures, prints, and other articles. See *Reg. v. Hicklin*, L. R. 3 Q. B. 360 ; 37 L. J. M. C. 89 ; 16 W. R. 801 ; 11 Cox C. C. 19 ; S. C. sub. nom. *Reg. v. Wolverhampton (Recorder of)*, 18 L. T. (N.S.) 395 ; *Steele v. Brannan*, L. R. 7 C. P. 264 ; 41 L. J. M. C. 85 ; 26 L. T. (N.S.) 509 ; 20 W. R. 607 ; 36 J. P. 676 ; *Scott v. Wolverhampton*, 32 J. P. 533, as to what are obscene books, &c.

(f) This is practically abrogated as to fireworks by 38 & 39 Vict. c. 17, s. 80.

(g) The mere fact of a man being instructed to deliver papers at a house is no answer to a complaint under this clause if the ringing, &c., is violent and at an unreasonable hour of the night. *Clarke v. Hoggins*, 11 C. B. (N.S.) 545.

(h) A claim of right does not necessarily oust jurisdiction under this section, for the court has to decide as a fact whether the place is a street. *Reg. v. Young*, *ante*, p. 912.

Appendix.

any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto :

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any street : (a) Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases :

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance : (b)

Penalty on drunken persons, &c., guilty of riotous or indecent behaviour.

XXIX. Every person drunk in any street, and guilty of any riotous or indecent(c) behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station-house within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justices before whom he is convicted, to imprisonment for a period not exceeding seven days. (d)

Fires.

Penalty for wilfully setting chimneys on fire.

And with respect to fires, be it enacted as follows :

XXX. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding five pounds : Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for accidentally allowing chimneys to catch fire.

XXXI. If any chimney accidentally catch or be on fire within the said limits the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings : Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant.

Commissioners may provide fire engines and firemen.

XXXII. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire, as they think fit. (e)

(a) This must be within the district of the local board. See *Flight v. Clarke*, 13 M. & W. 155.

(b) See also the Public Health Act, 1875, sections 44 and 47, *ante*, pp. 69, 74.

(c) See note (d) to section 28, *ante*.

(d) Where a charge is made under this clause, and the justices do not find that the defendant has been guilty of riotous conduct in a street, they cannot convict of simple drunkenness. *Martin v. Pridgeon*, 1 E. & E. 778 ; 28 L. J. M. C. 179. See also the Licensing Act, 1872, s. 12.

(e) A fire brigade established by an urban authority under this section and section 171 of the Public Health Act, 1875, may exclude from the premises on fire and their immediate neighbourhood all persons whose presence would interfere with their operations. *Carter v.*

XXXIII. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner(f) of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen;(g) and in case of any difference between the commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed), shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

And with respect to places of public resort, be it enacted as follows :(h)

XXXIV. Every victualler or keeper of any public house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty not exceeding twenty shillings.(i)

Appendix.

Commissioners may send fire engines and fireman beyond the limits of the special Act

Places of public resort.

Penalty on victuallers harbouring constables while on duty.

Thomas [1893], 1 Q. B. 673; 62 L. J. M. C. 104; 69 L. T. (N.S.) 436; 41 W. R. 510; 57 J. P. 438; 5 R. 343.

As to the delegation of its powers under this and the following section by a borough council to a watch committee, see the Police Act, 1893 (56 & 57 Vict. c. 10), s. 2, *post*.

(f) The owner of a stack of hay standing on ground which he occupied was held to be within these words. *Lewis v. Arnold*, L. R. 10 Q. B. 245; 44 L. J. M. C. 68; 39 J. P. 294, 519. But the decision has been overruled, and it has been held that the "owner" means the owner as defined by section 4 of the Public Health Act, 1875. *Salé v. Phillips* [1894], 1 Q. B. 349; 63 L. J. M. C. 79; 70 L. T. 559; 58 J. P. 460; 10 T. L. R. 222.

(g) This provision impliedly negatives the right to charge for engines and apparatus when employed within the district. *Drighlington Local Board v. Bower*, 22 W. R. 165; 38 J. P. 73.

(h) Reference may be made to the provisions of 23 & 24 Vict. c. 27, as to refreshment houses, and of the Licensing Acts as to the prevention of offences against public order by drunkenness in the highways and disorderly conduct in licensed houses; also to 8 & 9 Vict. c. 109, and the Licensing Act, 1872, s. 75, as to public billiard rooms; 8 & 9 Vict. c. 109, and 16 & 17 Vict. c. 119, as to gaming and betting houses (as to the latter Act, see *Bones v. Fenwick*, L. R. 9 C. P. 339; 43 L. J. C. P. 107; 30 L. T. (N.S.) 524; 22 W. R. 804; 38 J. P. 440; *Haigh v. Corporation of Sheffield*, L. R. 10 Q. B. 102; 44 L. J. M. C. 17; 31 L. T. (N.S.) 536; 23 W. R. 547; 39 J. P. 230; *Galloway v. Maries*, 8 Q. B. D. 275; 46 J. P. 326; *Eastwood v. Miller*, L. R. 9 Q. B. 440; 43 L. J. M. C. 139; 30 L. T. (N.S.) 716; 22 W. R. 799; 38 J. P. 647; *Oldham v. Ramsden*, 44 L. J. C. P. 309; 32 L. T. (N.S.) 825; 39 J. P. 583; *Reg. v. Cook*, 13 Q. B. D. 377; 51 L. T. (N.S.) 21; 32 W. R. 796; 48 J. P. 337; *Cox v. Andrews*, 12 Q. B. D. 126; 53 L. J. M. C. 34; 32 W. R. 289; 48 J. P. 247; *Jenks v. Turpin*, 13 Q. B. D. 505; 53 L. J. M. C. 161; 50 L. T. (N.S.) 808; 49 J. P. 20; *Snow v. Hill*, 14 Q. B. D. 588; 54 L. J. M. C. 95; 52 L. T. (N.S.) 859; 33 W. R. 475; 49 J. P. 440; *Snow v. Harris*, 1 T. L. R. 825; *Henretty v. Hart*, 13 Ct. of Sess. Cas. 4th series (J. C.), 9; *Bond v. Evans*, 21 Q. B. D. 249; 57 L. J. M. C. 105; 59 L. T. (N.S.) 411; 36 W. R. 767; 52 J. P. 613; *Sims v. Pay*, 58 L. J. M. C. 39; 60 L. T. (N.S.) 602; 53 J. P. 420; *Dyson v. Mason*, 22 Q. B. D. 351; 58 L. J. M. C. 55; 60 L. T. (N.S.) 265; 53 J. P. 262; 5 T. L. R. 231; *Davis v. Stephenson*, 24 Q. B. D. 529; 59 L. J. M. C. 73; 62 L. T. (N.S.) 436; 38 W. R. 492; 54 J. P. 565; 6 T. L. R. 242; *Hornsby v. Raggett* [1892], 1 Q. B. 20; 61 L. J. M. C. 24; 56 J. P. 135; 66 L. T. (N.S.) 21; 40 W. R. 111; 17 Cox C. C. 428; *McWilliam v. Dawson*, 56 J. P. 182; *Reg. v. Freedy*, 17 Cox C. C. 433; *Bond v. Plumb* [1894], 1 Q. B. 169; 70 L. T. 405; 42 W. R. 222; *Reg. v. Brown* [1895], 1 Q. B. 119; 64 L. J. M. C. 1; 72 L. T. (N.S.) 22; 43 W. R. 222; 59 J. P. 485; *Reg. v. Worton* [1895], 1 Q. B. 227; 64 L. J. M. C. 74; 72 L. T. (N.S.) 29; *Stoddart v. Sagar* [1895], 2 Q. B. 474; 64 L. J. M. C. 234; 73 L. T. (N.S.) 215; 59 J. P. 598; 11 T. L. R. 568; *Douves v. Johnson* [1895], 2 Q. B. 203; 64 L. J. M. C. 238; 72 L. T. (N.S.) 728; 43 W. R. 556; 59 J. P. 487; 11 T. L. R. 426; to 36 & 37 Vict. c. 38, as to betting and gaming in the streets upon this Act see *Tollett v. Thomas*, L. R. 6 Q. B. 514; 40 L. J. M. C. 209; 24 L. T. (N.S.) 508; 19 W. R. 890; 35 J. P. 359; *Langrish v. Archer*, 10 Q. B. D. 44; 52 L. J. M. C. 47; 47 L. T. (N.S.) 548; 31 W. R. 183; 47 J. P. 295; 15 Cox C. C. 194.

(i) A similar clause is contained in the Licensing Act, 1872, s. 16, as to which see *Mullins v. Collins*, L. R. 9 Q. B. 292; 38 J. P. 629; *Somerset v. Hart*, 12 Q. B. D. 360;

Appendix.

Penalty on
coffee-shop
keepers har-
bouring disor-
derly persons.

XXXV. Every person keeping any house, shop, room, or other place of public resort within the limits of the special Act for the sale or consumption of refreshments of any kind who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises shall, for every such offence, be liable to a penalty not exceeding five pounds.(a)

Penalty on per-
sons keeping
places for bear-
baiting, cock-
fighting, &c.

XXXVI. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting, or worrying any animal shall be liable to a penalty of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month; and the commissioners may, by order in writing, authorise the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding five shillings, and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned.(b)

Hackney
carriages.

Commissioners
may license
hackney
carriages.

And with respect to hackney carriages, be it enacted as follows:(c)

XXXVII. The commissioners may from time to time license(d) to ply for hire, within the prescribed distance, or if no distance is prescribed, within five miles from the general post office of the city, town, or place to which the special Act refers (which in that case shall be deemed the prescribed distance), such number of hackney coaches or carriages of any kind or description(e) adapted to the carriage of persons as they think fit.

What vehicles
to be hackney
carriages.

XXXVIII. Every wheeled carriage whatever may be its form or construction, used in standing or plying for hire, in any street within the prescribed distance,(f) and

53 L. J. M. C. 77; 32 W. R. 594; 48 J. P. 327; *Newman v. Jones*, 17 Q. B. D. 132; 55 L. J. M. C. 113; 55 L. T. (N.S.) 327; 50 J. P. 373; *Sherras v. De Rutzen* [1895], 1 Q. B. 918; 64 L. J. M. C. 218; 72 L. T. (N.S.) 839; 43 W. R. 526; 59 J. P. 440; 11 T. L. R. 369.

(a) The keeper of a licensed alehouse is not exempt from the operation of this clause. *Cole v. Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125; 2 L. T. (N.S.) 216; 8 W. R. 412; 24 J. P. 596. It is not unlawful to supply prostitutes, &c., with refreshments, nor does the mere doing so amount to permitting them to assemble. See *Greig v. Bendeno*, E. B. & E. 133; 27 L. J. M. C. 294; *Purkis v. Huwtable*, 1 E. & E. 780; 28 L. J. M. C. 221; *Whitfield v. Bainbridge*, 30 J. P. 644; *Parker v. Green*, 2 B. & S. 299; 31 L. J. M. C. 133; 10 W. R. 316; 26 J. P. 247; *Belaseo v. Hannant*, 3 B. & S. 13; 31 L. J. M. C. 225; 6 L. T. (N.S.) 577; 10 W. R. 867; 26 J. P. 823; *Wilson v. Stuart*, 3 B. & S. 913; 32 L. J. Q. B. 311; 8 L. T. (N.S.) 277; 27 J. P. 661; *Cole v. Coulton*, *supra*. A meeting to get up a subscription for a convicted thief's family, several thieves being in the company, is an assembly of thieves such as is forbidden by the Licensing Act, 1872, s. 14, and presumably by this section. *Marshall v. Fox*, L. R. 6 Q. B. 370; 40 L. J. M. C. 142; 24 L. T. (N.S.) 751; 35 J. P. 631.

(b) See also 12 & 13 Vict. c. 92, s. 3, and *Pitts v. Millar*, L. R. 9 Q. B. 380; 43 L. J. M. C. 96; 30 L. T. (N.S.) 328; 38 J. P. 615, decided upon that section.

(c) The provisions of this part of the Act, as contained in ss. 37, 40, 52, 54, 58 and 60—67, are now applied to omnibuses by 52 & 53 Vict. c. 14, s. 4, *post*.

(d) The possession of a revenue license to let horses and carriages under 2 & 3 Will. 4, c. 120, was held not to supersede the necessity of the proprietor of a hackney carriage having a license under this Act. *Buckle v. Wrightson*, 5 B. & S. 854; 34 L. J. M. C. 43; 11 L. T. (N.S.) 341; 13 W. R. 92; 11 Jur. (N.S.) 281; 29 J. P. 326. The commissioners may require an applicant for a license to attend in person. *Banton v. Davies*, 65 L. T. (N.S.) 192; 56 J. P. 294.

(e) As to omnibuses, see the Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), s. 4 (1), *post*.

(f) A hackney carriage while on the premises of a railway company, by their leave for the accommodation of passengers by their trains, is not plying for hire in a street; the stations are private property. *Case v. Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113; 20 L. T. (N.S.) 618; 17 W. R. 802; 33 J. P. 470; and see *Hole v. Digby*, 27 W. R. 884. But the dictum of KELLY, C.B., in that case, that they were not then plying for hire in that they were not at the disposal of the public, was not followed in *Clarke v. Stanford*, L. R. 6 Q. B. 357; 40 L. J. M. C. 151; 24 L. T. (N.S.) 389; 19 W. R. 849; 35 J. P. 662; and in *Allen v. Tunbridge*, L. R. 6 C. P. 481; 40 L. J. M. C. 197; 35 J. P. 695; it was held that a brougham, the owner of which, by agreement with a railway company, attended at their station to await the arrival of trains for the conveyance of any passenger who chose to have it, and whose driver solicited passengers, was a hackney carriage, plying for hire. And see *Foinett v.*

Appendix.

Proviso as to stage coaches.

Fee to be paid for license.

Persons applying for license to sign a requisition.

Penalty for omissions in requisition.

What shall be specified in the license.

every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; (g) and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act. (h)

XXXIX. For every such license there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings. (i)

XL. Before any such license is granted a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage, (k) in respect of which such license is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such license, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage: and any person who, on applying for such license, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, shall be liable to a penalty not exceeding ten pounds.

XLI. In every such license shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such license is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such license, which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

Clark, 41 J. P. 359. Where the owner of omnibuses being refused a license ran them regularly over the route for the use of the public free of charge, but with a box in each omnibus for voluntary contributions, the conductor being ready to give change if asked, it was held that the omnibuses were plying for hire. *Cocks v. Mayner*, 70 L. T. 403; 58 J. P. 104; 10 T. L. R. 133; 38 Sol. Journ. 100. Plying for hire in an open unenclosed piece of private ground to which the public have access, but over which there is no public right of way, is not plying for hire in a street. *Skinner v. Usher*, L. R. 7 Q. B. 423; 41 L. J. M. C. 158. A piece of ground adjoining a railway station, and belonging to the company, metalled and separated from the street only by a gutter, was used as an approach to the station. Private carriages were allowed so stand there, but no hackney carriages, except those of the appellant, who had, by agreement with the company, the sole right of standing carriages there. It was held that the plying for hire there was not plying for hire in a street. *Curtis v. Embery*, L. R. 7 Ex. 369; 42 L. J. M. C. 39; 21 W. R. 143. In the city of E. was a square in front of a hotel, unenclosed, and where the public could pass freely, except when the hotel keeper's carriages stood there. The square was let with the hotel, and was used for the hotel cabs when plying for hire. It was held that the square was part of the street. *Marks v. Ford*, 45 J. P. 157.

(g) As to what is a hackney carriage apart from any statutory definition, see *Bateson v. Oddy*, 43 L. J. M. C. 131; 30 L. T. (N.S.) 712; 22 W. R. 703; 38 J. P. 598.

(h) The proviso was held to apply to an omnibus. *Cousins v. Stockbridge*, 30 J. P. 166. The license here referred to was an excise license, now abolished by 32 & 33 Vict. c. 14. But though no license can now be obtained the law officers of the Crown have advised that the exemption remains. An ordinary omnibus running along a fixed route was held to be a hackney carriage within the meaning of 51 Vict. c. 8, s. 4. *Hickman v. Birch*, 24 Q. B. D. 172; 59 L. J. M. C. 22; 62 L. T. (N.S.) 113; 54 J. P. 406; 6 T. L. R. 104.

(i) As to the excise duty payable for hackney carriage licenses, see 47 & 48 Vict. c. 25, s. 3.

(k) This includes an omnibus. Town Police Clauses Act, 1889 (52 & 53 Vict. 14), s. 4 (1).

Appendix .

Licenses to be registered.

XLII. Every license shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

License to be in force for one year only.

XLIII. Every license so to be granted shall be under the common seal of the commissioners, if incorporated, or if not incorporated, shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such license, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners.

Notice to be given by proprietors of hackney carriages of any change of abode.

XLIV. So often as any person named in any such license as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping, employing, or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing, signed by him, to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such license at the office of the commissioners, who shall, by their clerk, or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such license as aforesaid as the proprietor, or one of the proprietors, of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such license in order that such memorandum as aforesaid may be endorsed thereon within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings.

Penalty for plying for hire without a license.

XLV. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a license as aforesaid for such carriage, or during the time that such license is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance, for which such license as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the license openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.

Drivers not to act without first obtaining a license.

XLVI. No person shall act as driver^(a) of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a license from the commissioners, which license shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same; and every such license shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned.^(b)

Penalty on drivers acting without license, or proprietors employing unlicensed drivers.

XLVII. If any person acts as such driver^(a) as aforesaid without having obtained such license, or during the time that his license is suspended, or if he lend or part with his license, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such license, or during the time that his license is suspended, as hereinafter provided, every such driver and every such proprietor shall, for every such offence, respectively be liable to a penalty not exceeding twenty shillings.

Proprietor to retain license of drivers, and to produce the same before justices on complaint.

XLVIII. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the license of such driver while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the license of

(a) This includes the conductor of an omnibus. Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), s. 4 (2), *post*.

(b) The license of the driver is only to be in force for one year. See the Public Health Act, 1875, s. 171, *ante*, p. 235.

such driver, if he be then in his employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the license of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him and to retain in his possession the license of any driver while such driver remains in his employ, or if he refuse or neglect to produce such license as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings.

Appendix.

XLIX. When any driver(a) leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the license belonging to him; but if such driver have been guilty of any misconduct, the proprietor shall not return his license, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint, and if upon inquiry it appear that the license of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such license, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

Proprietor to return license to drivers except in cases of misconduct.

L. The commissioners may, upon the conviction for the second time of the proprietor or driver(a) of any such hackney carriage for any offence under the provisions of this or the special Act, with respect to hackney carriages, or any bye-law made in pursuance thereof, suspend or revoke, as they deem right, the license of any such proprietor or driver.

Revocation of licenses of proprietors or drivers.

LI. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) "To carry Persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length and of a proportionate breadth; and the driver(a) of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

Number of persons to be carried in a hackney carriage to be painted thereon.

LII. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver(a) of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding forty shillings.

Penalty for neglect to exhibit the number, or for refusal to carry the prescribed number.

LIII. Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse,(c) to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any bye-law of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding forty shillings.

Penalty on driver for refusing to drive.

LIV. If the proprietor or driver of any such hackney carriage,(d) or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare(e) allowed by this or the special Act, or

Penalty for demanding more than the sum agreed for.

(c) The driver may refuse to carry persons suffering from infectious disease. See the Public Health Act, 1875, s. 127, *ante*, p. 146; and see also 53 & 54 Vict. c. 34, s. 11, *ante*, p. 556, as to the disinfection of public conveyances after carrying corpses.

(d) As to omnibuses and conductors of omnibuses, see Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), s. 4 (1) (2), *post*.

(e) As to omnibus fares, see Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), s. 4 (3), *post*.

Appendix.

any bye law made thereunder, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon.

Agreement to pay more than the legal fare.

LV. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any bye-law made under this or the special Act, shall be binding on the person making the same, and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid, and if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of forty shillings, and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Agreements to carry passengers a discretionary distance for a fixed sum.

LVI. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any bye-law made in pursuance thereof.

Deposit to be made for carriages required to wait.

LVII. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the bye-laws, then the sum of one shilling and sixpence for every half-hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away, or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made; or if such driver on the final discharge of such hackney carriage refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding forty shillings.

Penalty on proprietors, &c., convicted of overcharging.

LVIII. Every proprietor or driver of any such hackney carriage^(a) who is convicted of taking as a fare^(b) a greater sum than is authorised by any bye-law made under this or the special Act shall be liable to a penalty not exceeding forty shillings, and such penalty may be recovered before one justice; and in the conviction of such proprietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved.^(c)

Penalty for permitting persons to ride without consent of the hirer.

LIX. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings.

No unauthorised person to act as driver.

LX. No person authorised by the proprietor of any hackney carriage to act as driver of such carriage^(a) shall suffer any other person to act as driver of such carriage

(a) See note (d), *ante*, p. 919.

(b) See note (e), *ante*, p. 919.

(c) The remainder of this section permitting the party aggrieved to give evidence in proof of the offence was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), as no longer necessary.

without the consent of the proprietor thereof, and no person, whether licensed or not shall act as driver of any such carriage without the consent of the proprietor, and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence.

Appendix.

LXI. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding five pounds, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months.(d)

Penalty on drivers for drunkenness, furious driving, &c.

LXII. If the driver of any such hackney carriage(d) leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding twenty shillings for such offence, and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made, and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justices as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

Penalty in case of carriages being unattended at places of public resort.

LXIII. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage(d) let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding five pounds as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.(e)

Compensation for damage done by driver.

LXIV. Any driver of any hackney carriage(d) who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings.

Penalty on drivers obstructing other drivers.

LXV. If the driver of any such hackney carriage(d) be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any bye-law made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable, and in default of payment of such compensation the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Compensation to drivers attending to answer complaints not substantiated

(d) See note (d), ante, p. 919.

(e) Compensation accepted under this section is a bar to a subsequent action for the same damage. See *Wright v. London General Omnibus Company*, 2 Q. B. D. 271; 46 L. J. Q. B. 429; 36 L. T. (N.S.) 590; 25 W. R. 647; 41 J. P. 486. Apart from this provision the proprietor of a cab may be responsible for damages caused by the negligence of the driver, the relationship between them being generally that of master and servant. See *Venables v. Smith*, 2 Q. B. D. 279; 46 L. J. Q. B. 470; 36 L. T. (N.S.) 509; 25 W. R.

Appendix.

Fare unpaid may be recovered as a penalty. Penalty and compensation for damaging carriage.

Bye-laws for regulating hackney carriages.

Bathing.

Bye-laws for regulating public bathing places.

LXVI. If any person refuse to pay on demand to any proprietor or driver of any hackney carriage the fare^(a) allowed by this or the special Act, or any bye-law made thereunder, such fare may, together with costs, be recovered before one justice as a penalty.^(b)

LXVII. Any person using any hackney carriage^(c) plying under a license granted by virtue of this or the special Act, who wilfully injures the same shall, for every such offence be liable to a penalty not exceeding five pounds, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

LXVIII. The commissioners may from time to time (subject to the restrictions of this and the special Act) make bye-laws for all or any of the purposes following; (that is to say,^(d))

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments^(e) and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling :

For regulating the manner in which the number of each carriage, corresponding with the number of its license, shall be displayed :

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided :

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares :

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

And with respect to public bathing, be it enacted as follows :—

LXIX. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act the commissioners may make bye-laws for the following purposes;^(f) (that is to say,)

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe :

584; 41 J. P. 551; *Rayner v. Mitchell*, 2 C. P. D. 357; 25 W. R. 633; *King v. Spurr*, 8 Q. B. D. 104; *Playle v. Kew*, 2 T. L. R. 859; *King v. London Improved Cab Company*, 23 Q. B. D. 281; 58 L. J. Q. B. 456; 61 L. T. (N.S.) 34; 37 W. R. 737; 53 J. P. 788; 5 T. L. R. 591; *Keen v. Henry* [1894], 1 Q. B. 292; 63 L. J. Q. B. 211; 69 L. T. (N.S.) 671; 42 W. R. 214; 58 J. P. 262. As to the master's responsibility for the negligence of a volunteer called in to drive in case of emergency, see *Gwilliam v. Twist* [1895], 2 Q. B. 84; 64 L. J. Q. B. 474; 72 L. T. (N.S.) 579; 43 W. R. 566; 59 J. P. 484; 11 T. L. R. 415.

(a) See notes (d) and (e), *ante*, p. 919.

(b) The amount of the fare is recoverable only as a civil debt under sections 6 and 35 of the Summary Jurisdiction Act, 1879. *Reg. v. Kerswill or Torquay J.J.* [1895], 1 Q. B. 1; 64 L. J. M. C. 70; 71 L. T. (N.S.) 574; 43 W. R. 59; 59 J. P. 342; 10 R. 476; 11 T. L. R. 8.

(c) See note (k), *ante*, p. 917.

(d) Model bye-laws have been issued by the Local Government Board under this section. As to the confirmation of these bye-laws, see 47 Vict. c. 12, *ante*, p. 474.

(e) A bye-law prohibiting the plying for hire in any street or place within the district (except on one of the stands fixed by the local board) was held to be valid, though the actual locality of the stand was not set out in it. A driver on the sea beach passed a stand, and then got off his carriage and took up a fare, and it was held that he had been properly convicted of a breach of the bye-law. *Blackpool Local Board v. Bennett*, 4 H. & N. 127; 28 L. J. M. C. 203; 7 W. R. 382.

(f) Model bye-laws have been issued under this section. As to the confirmation of these bye-laws, see 47 Vict. c. 12, *ante*, p. 474. The license of the local board to use a bathing machine gives no authority to place the machine on the sea-shore, the ownership of which belongs to a private person, without his consent. *Mace v. Philcox*, 15 C. B. (N.S.) 600; 33 L. J. C. P. 124; 28 J. P. 297. As to indecent bathing on the sea-shore, see *R. v. Crunden*, 2 Camp. 89; *R. v. Reed*, 12 Cox C. C. 1.

For preventing any indecent exposure of the persons of the bathers :

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same :

For regulating the distance at which boats or vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

* * * * *

Appendix.

THE POOR LAW AUDIT ACT, 1848.

(11 & 12 VICT. CAP. 91.)(g)

An Act to make Provision for the Payment of Parish Debts the Audit of Parochial and Union Accounts and the Allowance of certain charges therein.

[31st August, 1848.]

* * * * *

IV. Where any appeal shall be made to the said commissioners(h) against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case ; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge shall be remitted, they may, *by an order under their seal*,(i) direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

Appeal against allowances, disallowances and surcharges.

V. Where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited ; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given ; and every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient : Provided always, that where the sum, or the aggregate of the sums disallowed by the auditor in the account of any officer, shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

Mode of ascertaining and certifying balances due from officers.

* * * * *

VII. In addition to the notices now required by law to be given by the auditor, he shall also give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or, in the case of a parish not comprised in a union, wherein such parish shall be situated, a reasonable time prior to the holding of his audit ; and the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit ; and, except where a party not being an officer bound to account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that

Notice of audit to be advertised

(g) This is one of the Poor Law Audit Acts incorporated with the Public Health Act, 1875, ss. 248, *ante*, p. 326. The marginal notes are as printed in the second edition of the Statutes Revised. See also 7 & 8 Vict. c. 101, *ante*, p. 797, and 12 & 13 Vict. c. 103 ; 29 & 30 Vict. c. 113 ; 42 Vict. c. 6, *post*.

(h) Now the Local Government Board ; see the note to 7 & 8 Vict. c. 101, s. 36, *ante*, p. 799.

(i) The words in italics were repealed by 29 & 30 Vict. c. 113, s. 5, *post*.

Appendix. the audit of any accounts was adjourned, and that notice of any such adjourned audit was given.

Notice by auditor to person surcharged.

VIII. If an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make this surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him, and showing cause against such surcharge, and at such time the said auditor shall hear the party, if present, and determine according to the law and justice of the case.

Recovery of sums certified by auditor.

IX. . . . in any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the Poor Law Commissioners, or of the commissioners aforesaid, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor ; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information.(a)

* * * * *

SCHEDULE to which this Act refers.

FORMS OF CERTIFICATES.

1. *Against an Accounting Officer.*

I do hereby certify, that in the account of *A. B.*, the [set out the name of the office] of the parish of [or of the union], I have disallowed [or surcharged] the sum of .

As witness my hand, this day of , 1848.
M. N., Auditor of the District,
which comprises the above-named Parish or Union.

2. *Against a Person not an Accounting Officer.*

I do hereby certify, that in the accounts of the Union [or of the Parish of] I have disallowed the sum of £ as a payment illegally made out of the funds of such union [or parish], and I find that *C. D.*, of , authorised the making of such illegal payment, and I do hereby surcharge the said *C. D.*, with the same.

As witness my hand, this day of , 1848.
M. N., Auditor of the District,
which comprises the above-named Union or Parish.

(a) See the cases cited in the notes to 7 & 8 Vict. c. 101, s. 32, ante, p. 790. See also *Reg. v. Fordham*, L. R. 8 Q. B. 501, where it was held that the certificate of the treasurer was only *prima facie* evidence of non-payment, and that it was open to the person surcharged to show what he had paid, if he could do so without contradicting the auditor's certificate.

Appendix.

THE POOR LAW AMENDMENT ACT, 1849.

(12 & 13 VICT. CAP. 103.)(b)

An Act to make certain Amendments in the Laws for the Relief of the Poor.

[1st August, 1849.]

* * * * *

IX. [Recital of 11 & 12 Vict. c. 43, s. 11, and of doubts whether the provision of that section applies to proceedings by auditors to recover sums certified by them to be due in the accounts of officers or other persons.] Nothing in the provisions of the said Act herein recited shall be deemed to apply to any such proceeding by any auditor, but no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the Poor Law Board, after the lapse of nine calendar months from the determination thereupon.(c)

Recited provision not to apply to proceedings by auditors.

* * * * *

XI. Where any auditor shall lay any information for a penalty in consequence of the default of any officer or other person to attend the audit, or the adjournment thereof, or to produce the proper account of vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor, when not recovered from the defendant in such information, shall, if the Poor Law Board consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due.

Costs of auditors on informations for default of due attendance at audit, &c.

* * * * *

THE BURIAL ACT, 1857.

(20 & 21 VICT. CAP. 81.)(d)

An Act to amend the Burial Acts.

[25th August, 1857.]

* * * * *

IV. In case it appear to Her Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for Her Majesty, with the advice of Her Privy Council in case Her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board

Local board of health or improvement commissioners may, by order in council, be constituted a burial board.

(b) The following sections of this Act relate to the audit of accounts, and are incorporated with the Public Health Act, 1875, by sections 247, 248, *ante*, p. 326. The short title is as enacted by the Short Titles Act, 1892 (55 & 56 Vict. c. 10). The marginal notes are as in the second edition of the Statutes Revised. See also 7 & 8 Vict. c. 101, *ante*, p. 797; and 11 & 12 Vict. c. 91, *ante*, p. 923; and 29 & 30 Vict. c. 113; and 42 Vict. c. 6, *post*.

(c) See upon this clause *Reg. v. Tyrwhitt*, 15 Q. B. 249; 4 N. S. C. 266; 19 L. J. M. C. 249; 14 Jur. 1024.

(d) The short title of this Act is as enacted by the Short Titles Act, 1892 (55 & 56 Vict. c. 10). The marginal notes are as printed in the second edition of the Statutes Revised. The following clauses are such as concern the appointment and duties of local authorities as burial boards. It is of course impossible to include in the Appendix all the provisions of the Burial Acts, for which reference should be made to Brooke Little's "Law of Burials," second edition. See also 23 & 24 Vict. c. 64, *post*, and 25 & 26 Vict. c. 100, *post*. See also the Public Health Act, 1875, ss. 310, 343, and Schedule V., Part 3, *ante*, p. 453.

Appendix. or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorisation of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848.(a)

Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground.

6 & 7 Vict. c. 37.
7 & 8 Vict. c. 94.
19 & 20 Vict.
c. 104.

V. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of Her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh *Victoria*, chapter thirty-seven, the seventh and eighth *Victoria*, chapter ninety-four, and the nineteenth and twentieth *Victoria*, chapter one hundred and four, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein-recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute, or be liable), shall with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton, without the consent of such incumbent, clerk, or sexton respectively.

* * * * *

Resolutions, &c., of vestries not to be void by reason of irregularity of notices, &c.

XXVII. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall

(a) See the Public Health Act, 1875, s. 4, *ante*, p. 3.

thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.

Appendix.

XXVIII. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts (b) or any of them, or under this Act.

Meaning of
"Burial board."

* * * * *

XXX. The hereinbefore recited Acts and this Act shall be construed together as one Act.

Recited Acts
and this to be
as one.

THE PUBLIC HEALTH ACT, 1858.

(21 & 22 VICT. CAP. 97.) (c)

An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health. [2nd August, 1858.]

I. [Powers of General Board of Health under 18 & 19 Vict. c. 116, added to those of the Privy Council.] (c)

II. [Certain powers in relation to Public Vaccination vested in the Privy Council.] (d)

III. [Privy Council may direct inquiries.] (c)

IV. The powers of appointing and removing a medical officer, vested in the General Board of Health under the General Board of Health Continuance Act, 1855, shall, upon the discontinuance of that board, be vested in the Privy Council (e) . . . ; and the Privy Council may also from time to time employ such other persons as they deem necessary for the purposes of this Act; and there shall be paid to the medical officer such salary not exceeding fifteen hundred pounds *per annum*, and to such other persons such remuneration and allowances, as the Commissioners of Her Majesty's Treasury may direct; and such salary, remuneration, and allowances shall be paid out of such moneys as shall be provided by Parliament. (f)

Privy Council
to appoint
medical officer,
&c.

V. [Medical officer to report annually as to the execution of this Act.] (c)

VI. [Reports to be laid before Parliament.] (c)

VII. All powers vested in the Privy Council by this Act may be exercised by any three or more of the lords and others of the Privy Council, the Vice-President of the Committee of the said Privy Council on Education being one of them, and all orders, regulations, directions, and acts of the Privy Council under this Act shall be sufficiently made and signified by a written or printed document, signed by one of the clerks of the Privy Council, or such officer as may be appointed by the Privy Council in this behalf; and all orders, regulations, directions, and acts made or signified by any written or printed document purporting to be so signed shall be deemed to have been duly made, issued, and done by the Privy Council, and every such document shall be received in evidence in all courts and before all justices and others without

As to the
making and
authentication
of orders, &c.

(b) These are the Burial Act, 1852 (15 & 16 Vict. c. 85); the Burial Act, 1853 (16 & 17 Vict. c. 134); the Burial Act, 1854 (17 & 18 Vict. c. 87); the Burial Act, 1855 (18 & 19 Vict. c. 128).

(c) Sections 1, 3, 5 and 6 are repealed by the Statute Law Revision Act, 1893 (No. 1) (56 & 57 Vict. c. 14), the powers and duties of the Privy Council under those sections having been transferred to the Local Government Board by 34 & 35 Vict. c. 70, *post*.

(d) Repealed by 30 & 31 Vict. c. 84, s. 1.

(e) The next clause of this section as it originally stood was repealed by the Statute Law Revision Act, 1878.

(f) Section 4 is repealed by the Statute Law Revision Act, 1875, in so far as it relates to the salary of the medical officer. As to the salary of this officer, see the Public Health Act, 1875, Schedule V., Part 3., *ante*, p. 455.

Appendix. proof of the authority or signature of such clerk or other officer, or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the Privy Council.

VIII. [*Proceedings for penalties under Vaccination Acts.*](a)

Short title. IX. This Act may be cited as "The Public Health Act, 1858."

THE PUBLIC IMPROVEMENT ACT, 1860.

(23 & 24 VICT. CAP. 30.)

An Act to enable a majority of two-thirds of the Ratepayers of any Parish or District, duly assembled, to rate their District in aid of Public Improvements for general benefit within their District.(b) [3rd July, 1860.]

Ratepayers may hold land, &c., for purposes of forming public walks, &c., and levy rates for maintaining the same, &c.

I. It shall be lawful for the ratepayers of any parish maintaining its own poor, the population of which, according to the last account from time to time taken thereof by the authority of Parliament, exceeds five hundred persons, to purchase or lease lands, and to accept gifts and grants of land, for the purpose of forming any public walk, exercise or play ground, and to levy rates for maintaining the same, and for removal of any nuisances or obstruction to the free use and enjoyment thereof, and for improving any open walk or footpath, or placing convenient seats, or shelters from rain, and for other purposes of a similar nature.

Adoption of Act, according to 9 & 10 Vict. c. 74.

II. This Act may be adopted for any borough, or for any parish having a population of five hundred or upwards (according to the last account for the time taken by authority of Parliament), in the same manner as the Act of the ninth and tenth Victoria, chapter seventy-four, may be adopted in such borough or parish.(c)

As to public baths and wash-houses.

III. Where the Act is adopted in a borough or in such a parish, the provisions of the Act of the ninth and tenth Victoria, chapter seventy-four, for the purposes below specified applicable in the like cases where that Act is adopted, shall take effect for the purposes of this Act, viz. : All the provisions concerning—

1. The authority by which and the manner in which the Act is to be carried into execution : (d)
2. The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses) : (e)
3. The appointment (in the case of a parish) of commissioners, the tenure of office and procedure, and the audit of their accounts : (f)
4. The powers of the councils and commissioners for the purposes of the Act (except the powers of borrowing money). (g)

Ratepayers, after notice given, to rate parishes.

IV. After the adoption of this Act it shall be lawful for the ratepayers in meeting assembled to rate such parish to a separate rate, to be called the "Parish Improvement Rate;" provided that such rate be agreed to by a majority of at least two-thirds(h) . . . of the ratepayers assembled at such meeting.

(a) Repealed by 22 & 23 Vict. c. 3.

(b) This Act does not affect sanitary authorities other than urban sanitary authorities which are also municipal corporations. It cannot be adopted in any sanitary district other than a borough, but it may be adopted by any parish, wheresoever situate, of which the population exceeds five hundred. See now as to rural parishes, section 7 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

(c) The 9 & 10 Vict. c. 74, may be adopted in manner provided by sections 1, 5, of that Act, *ante*, p. 846.

(d) 9 & 10 Vict. c. 74, s. 7, *ante*, p. 848.

(e) 9 & 10 Vict. c. 74, s. 16, *ante*, p. 849, and s. 21, *ante*, p. 850.

(f) 9 & 10 Vict. c. 74, ss. 6—15, *ante*, p. 848.

(g) 9 & 10 Vict. c. 74, ss. 24—40, *ante*, p. 850.

(h) The words "in value" here following were repealed by section 89 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

V. Corporate bodies shall be allowed to attend meetings to be held as aforesaid and to vote thereat by some person to be deputed by them for that purpose under their corporate seal.

Appendix.

Corporate bodies may attend and vote. One-half of the estimated cost to be raised by private subscription. Amount of rate.

VI. Provided always, that previous to any such rate being imposed a sum in amount not less than at least one-half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation.

VII. Such rate shall not exceed sixpence in the pound.

THE LOCAL TAXATION RETURNS ACT, 1860.

(23 & 24 VICT. CAP. 51.)(i)

An Act to provide for an Annual Return of Rates, Taxes, Tolls, and Dues levied for Local Purposes in England. [23rd July, 1860]

I. The clerk to any corporation, justices, commissioners, district or other board, vestry, inspectors, trustees, or other body or persons authorised to levy or to order to be levied any of the rates, taxes, tolls, or dues mentioned in the schedule to this Act, or any other compulsory rates, taxes, tolls or dues in *England* (other than such as are levied for the public revenue of the United Kingdom), shall make a return of the sums levied or received by or in respect of such rates, taxes, tolls, and dues, and of the expenditure thereof, to one of Her Majesty's principal Secretaries of State in every year.(k)

Clerks of bodies empowered to levy rates, &c., to make annual returns to Secretary of State.

II. Such returns shall show the amounts levied and expended respectively with such other particulars and in such form as shall from time to time be ordered by such Secretary of State.(k)

Returns to be made for the latest year for which accounts are made up.

III. Where any such rates, taxes, tolls or dues are levied and expended or to be accounted for by churchwardens, chapelwardens, or any officers or persons not authorised to act as a board such returns as hereinbefore mentioned in respect of such rates, taxes, tolls, or dues, and the expenditure thereof, shall be made by such churchwardens, chapelwardens, or other officers or persons, and they shall be severally liable in respect of any neglect to make the same.(l)

Who are to make returns in certain cases.

IV. Any churchwarden, officer, or other person required as aforesaid to make such return who neglects so to do in the month of *June* in any year shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recoverable on summary conviction thereof before two justices.(m)

Penalty for default.

V. Where any annual return is now by law required to be made to the Secretary of State, or to any public department, under any Act of Parliament, this Act shall not render necessary any further or other return in respect of the same matters: Provided always, that the said Secretary of State may, by his order published in the *London Gazette*, direct that all or any of such returns now required as aforesaid shall in future be made under this Act, and shall be subject to the provisions and penalties thereof.

Saving for returns already required.

VI. The said Secretary of State shall every year cause the returns transmitted to him under this Act to be abstracted, and the abstract thereof to be laid before both Houses of Parliament.

Abstracts of returns to be laid before Parliament.

(e) This Act is repealed as to boroughs within the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Schedule (1), Part 2. As to returns to be made in such boroughs, see section 28 of that Act. This Act is amended by 40 & 41 Vict. c. 66, *post*. It is extended to highway accounts by 42 & 43 Vict. c. 39, and 45 & 46 Vict. c. 67.

(k) The annual return must now be made for the year ending 25th March, and must be sent to the Local Government Board. The return may be dispensed with where the accounts are audited by a district auditor: 42 Vict. c. 6, s. 3; 40 & 41 Vict. c. 66, s. 1, *post*.

(l) See 40 & 41 Vict. c. 66, s. 2, *post*.

(m) See also 40 & 41 Vict. c. 66, s. 2, *post*. The words "clerk, treasurer" remitted from this section after the word "any," and before the word "churchwarden," were repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

Appendix.

Poor rate
returns to be
made to Poor
Law Board as
heretofore,

Saving for joint
stock companies
and private
rights of toll,
&c.

VII. This Act shall not extend to the rates levied for the relief of the poor, or the expenditure thereof, but the returns thereof shall continue to be made to the Poor Law Board, (a) as by the orders of such board shall from time to time be directed.

VIII. This Act shall not extend to any tolls or dues taken by any railway, canal or joint-stock company as profits of their undertaking, or to any tolls or dues taken by prescription or otherwise as private property.

SCHEDULE.

Church rates and chapel rates ; whether made by the common law or under the Church Building Acts, or under any other Acts of Parliament.

Sewers rates and "general sewers tax," and all rates, scots, and taxes levied by courts or commissioners of sewers ; whether levied under the Acts of the 3 & 4 Will. 4, c. 22, and 4 & 5 Vict. c. 45, or under any other Act of Parliament, or by charter, usage, or custom. (b)

Rates under the Act for the lighting and watching of parishes, 3 & 4 Will. 4, c. 90.

Rates levied by improvement commissioners or other commissioners, or by any trustees or corporation acting under any local Act for the paving, draining, cleansing, or watching, improvement or regulation of any town or district.

Rates levied by or under the order of any vestry or district board, under the Act 18 & 19 Vict. c. 120, for the better local management of the metropolis.

Tolls and dues levied under the authority of Parliament in respect of markets bridges, or harbours.

THE BURIAL ACT, 1860.

(23 & 24 VICT. CAP. 64.) (c)

An Act to make further provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards. [6th August, 1860.]

Expenses of
local board con-
stituted a burial
board may be
paid out of
general district
rate, or by a
separate rate.

I. Any money required by any local board constituted a burial board, for defraying the expenses of carrying into execution the powers and provisions of the Burial Acts and of this Act in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the local board so think fit, be paid out of the general district rates leviable within such district ; and such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them. (d)

Expenses of
improvement
commissioners,
when acting as
a burial board,
may be paid out
of improvement
rate or by a
separate rate.

II. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed, or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district, and the commissioners as such burial board may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them. (e)

(a) Now the Local Government Board : 34 & 35 Vict. c. 70. *post*.

(b) As to returns by sanitary authorities, see 40 & 41 Vict. c. 66, ss. 2, 3.

(c) See 20 & 21 Vict. c. 81, *ante*, p. 925, and 25 & 26 Vict. c. 100, *post*, p. 932.

(d) See 21 & 22 Vict. c. 98, s. 49, *ante*, p. 453.

(e) See 25 & 26 Vict. c. 100, s. 1, *post*, p. 932.

III. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by moneys raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively, and any surplus of the moneys raised by any rate made under this Act, and of the income of any burial ground provided by means of moneys raised or paid under the provisions of this Act, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act.(f)

Appendix.

Separate accounts to be kept.

IV. Where any parish or place has been divided into two or more parts or districts for all, or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of Her Majesty's principal Secretaries of State.(g)

As to appointment of burial boards without consent of Secretary of State.

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

(23 & 24 VICT. CAP. 106.)(h)

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rentcharge, Annual Feu Duty or Ground Annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.

[20th August, 1860.]

I. [So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seized in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.](i)

Part of section 10 of recited Act repealed.

II. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation except under the provisions of the said Act.(k)

Sections 10 and 11 of recited Act as to power to sell, &c., lands for an annual rentcharge and to recover, extended to all sales, &c., where parties are under disability.

* * * * *

IV. In every case of such sale or compensation by any parties other than parties seized in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided, that the amount of such annual rentcharge shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added

Amount of rentcharge to be settled in manner directed in the 9th section of recited Act.(l)

(f) As to the form of the accounts, see "Glen's Local Government Orders," at pp. 389—392. Income tax is payable on the surplus. *Paddington Burial Board v. Commissioners of Inland Revenue*, 13 Q. B. D. 9; 53 L. J. Q. B. 224; 50 L. T. (N.S.) 211; 32 W. R. 551; 48 J. P. 311.

(g) See *Reg. v. Walcot St. Swithin (Overseers of)*, 2 B. & S. 571; 31 L. J. M. C. 221; 10 W. R. 602.

(h) See 8 & 9 Vict. c. 18, *ante*, p. 808; and 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15, *post*.

(i) This section was repealed by the Statute Law Revision Act, 1875, but it is retained here to explain the repeal effected by it. See 8 & 9 Vict. c. 18, s. 10, *ante*, p. 811.

(k) See these sections, *ante*, p. 811; section 3 relates to Scotland only.

(l) See the section, *ante*, p. 810. Words relating to Scotland only are omitted from this and the following section.

Appendix. — to and shall form a part of the said rentcharge and that no fine premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge made payable for such lands: Provided, also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

V. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rentcharge the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rentcharge so for the time being payable.

VI. [*Purchase of lands by municipal corporations.*](a)

* * * * *

VIII. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, in all matters in which it relates to the said Act and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

This Act and 8 & 9 Vict. c. 18 to be construed together.

THE BURIAL ACT, 1862.

(25 & 26 VICT. CAP. 100.)(b)

An Act to authorize Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the purposes of the Burial Acts. [7th August, 1862.]

* * * * *

Commissioners, with consent of Treasury, may mortgage improvement rate and burial rate, or either.

I. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who shall have been constituted a burial board for any district, may, with the approval of the Treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within the district, such sums of money as may be required by the burial board for the purposes of the Burial Act within the district.(c)

II. The clauses and provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners,(d) shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof.

Certain provisions of 10 & 11 Vict. c. 16, to apply to this Act.

(a) The whole of this section is repealed, except as to Ireland, by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), having been superseded as to England by certain provisions of the Municipal Corporations Act, 1882, Part V.

(b) The preamble to this Act reciting 23 & 24 Vict. c. 64, was repealed by the Statute Law Revision Act, 1893 (No. 1), 56 & 57 Vict. c. 14. See 20 & 21 Vict. c. 81, *ante*, p. 925; and 23 & 24 Vict. c. 64, *ante*, p. 930.

(c) This is an amendment of 23 & 24 Vict. c. 64, s. 2, *ante*, p. 930.

(d) See 10 & 11 Vict. c. 16, ss. 75 to 88. Brook Little's "Law of Burials," 2nd ed., p. 750.

THE TOWN GARDENS PROTECTION ACT, 1863.

(26 & 27 VICT. CAP. 13.)(d)

An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs. [4th May, 1863.]

* * * * *

I. Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the Metropolitan Board of Works, where the same is in any place under their jurisdiction, except the city of *London* (where the provisions of this Act shall be carried into effect by the corporation of the said city), and the corporate authorities in any other city or borough, shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachment made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the Metropolitan Board of Works or corporate authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the Metropolitan Board of Works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

Gardens in certain squares, &c., may be freed from neglect, encroachments, &c., and vested in the Metropolitan Board of Works or other corporate authority;

or vested in a committee of rated inhabitants.

II. . . . (e) Where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the Metropolitan Board of

Protection of open spaces from encroachment.

(d) The short title of this Act is as enacted by the Short Titles Act, 1892 (55 & 56 Vict. c. 10). It is not absolutely incorporated by any of the Public Health Acts, but is referred to in the notes to section 164 of the Public Health Act, 1875, *ante*, p. 227; and see *Tulk v. Metropolitan Board of Works*, there cited. The preamble and clause of enactment of this Act were repealed by the Statute Law Revision Act, 1893 (No. 1) (56 & 57 Vict. c. 14).

(e) The preamble to this section reciting that it is expedient that the same should be protected from undue encroachment, is repealed by the Statute Law Revision Act, 1893 (No. 1) (56 & 57 Vict. c. 14).

Appendix.

Works where the same is in any place under their jurisdiction, except the city of London, where the same shall be addressed to the corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said Metropolitan Board of Works or corporate authority to protect the right before mentioned, the said Metropolitan Board of Works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request, and then and thereupon the right of such person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such Metropolitan Board of Works or corporate authority, who shall be fully empowered for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

Expenses how
to be defrayed.

III. Any charge incurred by the Metropolitan Board of Works in the execution of this Act shall be deemed to be expenses of the said board for payment whereof provision is made by the Act for the better local management of the metropolis; and the expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their city or borough the Act intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, and any other Act amending the same. (a)

5 & 6 Will. 4,
c. 76.

Bye-laws for
management of
garden, &c.

IV. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter, bye-laws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all courts whatever, and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed, as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: Provided always, that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justices in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

Penalty for
injuring garden.

V. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A. B. and others.

Certain provisions of
18 & 19 Viet.
c. 120 to be
incorporated
with this Act,
and to apply to
penalties, &c.,
imposed by
this Act.
11 & 12 Viet.
c. 43, also to
apply.

VI. The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Act passed in the session of Parliament held in the eighteenth and nineteenth years of the reign of Her most Gracious Majesty the Queen, chapter one hundred and twenty, (b) shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the Act passed in the twelfth year of the reign of Her Majesty the Queen, chapter forty-three, (c) shall apply to every penalty or forfeiture imposed by

(a) See now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(b) The Metropolitan Management Act, 1855.

(c) The Summary Jurisdiction Act, 1848.

this Act, or any bye-law made in pursuance thereof for any matter or thing done or omitted to be done within any other part of *England and Wales*. **Appendix.**

VII. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to Her Majesty in right of Her Crown or of Her Duchy of *Lancaster*, or any garden, ornamental ground, or other land Works or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of Parliament. Act not to extend to property of the Crown or to property under the management of the Commissioners of Works, &c.

VIII. Nothing in this Act shall extend to *Scotland* or *Ireland*.

Extent of Act.

THE WATERWORKS CLAUSES ACT, 1863.

(26 & 27 VICT. CAP. 93.)(d)

An Act for consolidating in one Act certain Provisions frequently inserted in Acts relating to Waterworks. [28th July, 1863.]

WHEREAS the Waterworks Clauses Act, 1847, was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act 10 & 11 Vict. c. 17. usually introduced into Acts of Parliament authorising the construction of certain waterworks.

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks, as for ensuring greater uniformity in the provisions themselves.(e)

* * * * *

Preliminary.

I. This Act may be cited as the Waterworks Clauses Act, 1863; and the Waterworks Clauses Act, 1847, and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863. Short title.

II. This Act shall apply to any waterworks to which any special Act(f) hereafter passed and incorporating this Act relates; and every such special Act is hereinafter referred to as "the special Act." Application of Act and interpretation of terms.

Terms used in this Act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847.

The provisions respecting the recovery of penalties contained in the last-mentioned Act shall be incorporated with this Act.(g)

Security of Reservoirs.

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows:—

III. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them. Power for justices to inquire as to danger of reservoir.

(d) See 10 & 11 Vict. c. 17, and note (g), *ante*, p. 871.

(e) The clause of enactment was repealed by the Statute Law Revision Act, 1893 (No. 1) (56 & 57 Vict. c. 14).

(f) See the Public Health Act, 1875, s. 316, *ante*, p. 410.

(g) 10 & 11 Vict. c. 17, s. 85. The procedure for recovery of penalties is that provided by the Railways Clauses Act, 1845, ss. 140 *et seq.*, *ante*, p. 843.

Appendix.	IV. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.
Order of justices on undertakers to repair reservoir.	V. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall order the undertakers, within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.
Order of justices on failure of undertakers to repair.	If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.
Form of order.	VI. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the schedule to this Act, with such variations as circumstances require.
Persons acting under order not trespassers.	VII. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.
Order for payment of costs and expenses.	VIII. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.
Appeal by undertakers.	If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.
	IX. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845,(a) are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the cause of appeal arises; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.
Undertakers not to be responsible for consequences of order.	X. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties, liabilities, or obligations under the special Act that may be occasioned by or result from the execution of any such order.(b)
	* * * * *

(a) 8 & 9 Vict. c. 20, s. 157, ante, p. 845.
(b) Section 11 relates to Scotland only.

*Supply of Water.***Appendix.**

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows :—

XII. A supply of water for domestic purposes(c) shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

Supply for other than domestic purposes.

XIII. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

Want of supply for other than domestic purposes, when excused.

XIV. Where the undertakers are authorised by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress . . . for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceedings, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be.(d)

Power to let meters for hire.

XV. The officers of the undertakers may enter any house, building, or lands to, through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice . . . this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon.(e)

Power for ascertaining quantity consumed by meter, and for removing meters, &c.

Protection of Water.

And with respect to the waste or misuse of the waste supplied by or belonging to the undertakers, be it enacted as follows :—

XVI. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied.

Power to cut off water in certain cases.

XVII. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, system, bath, soilpan, watercloset, or other

Penalty for waste, &c., of water by non-repair of pipes, &c.

(c) See 10 & 11 Vict. c. 17, s. 53, p. 880, and the notes thereto, and compare *Smith v. Muller* [1894], 1 Q. B. 192; 70 L. T. (N.S.) 170; 58 J. P. 167; 10 R. 622.

(d) Words relating to Scotland only are omitted from this and the following section. An obligation on the part of a consumer to provide a meter cannot be implied from this section. *Sheffield Waterworks Company v. Carter*, 8 Q. B. D. 632; 51 L. J. M. C. 97; 30 W. R. 889; 46 J. P. 548. As to the duty of a consumer to provide some means of measuring the water, see *Sheffield Waterworks Company v. Bingham*, 52 L. J. Ch. 624; 48 L. T. (N.S.) 604. See these cases more fully set out, *ante*, p. 85.

See further as to the right to demand a supply by meter. *Cooke v. New River Company*, *ante*, p. 878.

(e) See also the Public Health Act, 1875, s. 58, *ante*, p. 85.

Appendix. apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for application of water contrary to agreement.

XVIII. If any person—
First, not having from the undertakers a supply of water for other than domestic purposes, uses, for other than domestic purposes, any water supplied to him by the undertakers ; or
Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—
he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

Penalty for extension or alteration of pipes.

XIX. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alteration in any such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the undertakers ; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed.(a)

Penalty for use of water without agreement.

XX. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

Recovery of Rates.

And with respect to the recovery of water rates and other money, be it enacted as follows :—

Recovery of rates by action.

XXI. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction ; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof.(b)

SCHEDULE.

Form of Order of Justices.(c)

To A. B., of , &c.,
We, the undersigned, two of Her Majesty's justices of the peace acting for the [county] of , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein] forthwith to lower the water in the [here describe the reservoir, and the extent to which the water is to be lowered], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the], and for acting as you are hereby directed this shall be your sufficient warrant.

Given under our hands this day of one thousand eight hundred and

A. B.
C. D.

(a) See also 10 & 11 Vict. c. 17, s. 59, *ante*, p. 881.
(b) See 10 & 11 Vict. c. 17, s. 74, *ante*, p. 886.
(c) See section 6, *ante*, p. 936.

THE POOR LAW AMENDMENT ACT, 1866.

Appendix.

(29 & 30 VICT. CAP. 113.)(d)

An Act to amend the Act providing Superannuation Allowances to Officers of Unions and Parishes, and to make other Amendments in the Laws relating to the Relief of the Poor. [10th August, 1866.]

* * * * *

V. [So much of the fourth section of the statute of the eleventh and twelfth years of the reign of Her Majesty, chapter ninety-one, as requires the Poor Law Board to issue an order under their seal in cases where they direct any surcharge or disallowance made by an auditor to be remitted shall be repealed; and such direction, if given in writing under the hand of the President of the said Board, and countersigned by a secretary or assistant secretary, shall have the same effect as if such direction were given by such an order as aforesaid.](e)

Remission of surcharges and disallowances need not be made by order under seal.

VI. When the Poor Law Board shall require an auditor to hold an extraordinary audit of the accounts of any guardians or overseers, or of any officer, whether still continuing or upon his resignation or removal from office, such audit shall be deemed to be an audit within the meaning of the several Acts relating to the audit of the accounts of the poor rate, and may be held after three days' notice thereof given in the usual manner.

Effect of an extraordinary audit.

VII. The auditor who shall be authorised to audit the accounts of any guardians, overseers, or officers may at any time, when authorised or required by the Poor Law Board so to do, inspect the accounts and books of account of any guardian, overseer, or any officer liable to account to him; and any such guardian, overseer, or officer who shall thereupon refuse to allow him to inspect the same, or shall obstruct him in such inspection, or shall conceal any such account or book for the purpose of preventing such inspection shall forfeit a sum not exceeding five pounds, to be recovered as a penalty under the statute of the fourth and fifth of King William the Fourth, chapter seventy-six, (f) and to be applied to the use of the parish or union for which such guardian, overseer, or officer respectively shall act.

Auditor empowered to inspect books at any time.

* * * * *

THE AGRICULTURAL GANGS ACT, 1867.

(30 & 31 VICT. CAP. 130.)(g)

An Act for the Regulation of Agricultural Gangs. [20th August, 1867.]

* * * * *

I. This Act may be cited for all purposes as "The Agricultural Gangs Act, 1867." Short title.

* * * * *

III. The following words and expressions shall in this Act have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,

Definition of terms.

"Child" shall mean a child under the age of thirteen years:

"Young person" shall mean a person of the age of thirteen years and under the age of eighteen years:

(d) The following clauses relate to the audit of accounts, and are incorporated by the Public Health Act, 1875, ss. 247, 248, *ante*, p. 326. See also 7 & 8 Vict. c. 101, *ante*, p. 797; 11 & 12 Vict. c. 91, *ante*, p. 923; 12 & 13 Vict. c. 103, *ante*, p. 925, and 42 Vict. c. 6, *post*.

(e) See the section, *ante*, p. 923. This section has been entirely repealed by the Statute Law Revision Act, 1893 (No. 1), 56 & 57 Vict. c. 14, but is here retained for the sake of explaining the repeal effected by it.

(f) That is under section 99, but now according to the provisions of the Summary Jurisdiction Acts.

(g) See the Local Government Act, 1894, ss. 27 (1) (a), and 32, *ante*, pp. 727, 730. The preamble, clause of enactment, and second section of this Act are repealed by the Statute Law Revision Act, 1893 (No. 1), 56 & 57 Vict. c. 14.

Appendix.

"Woman" shall mean a female of the age of eighteen years or upwards :

"Gangmaster" shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation ; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view :

"Agricultural gang" shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster.

Regulations as to gangs.

IV. The following regulations shall be observed by every gangmaster with respect to the employment of children, young persons, and women :

(1.) (a)

(2.) No females shall be employed in the same agricultural gang with males :

(3.) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as gangmaster is also present with that gang :

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

Gangmasters to be licensed.

V. No person shall act as a gangmaster unless he has obtained a license to act as such under this Act.

Any person acting as a gangmaster without a license under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

Licenses not to be granted to keepers of public-houses.

VI. No license shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquors.

License to gangmasters.

VII. Licenses to gangmasters shall be granted by two or more justices in divisional petty sessions, (b) on due proof to the satisfaction of such justices that the applicant for a license is of good character, and a fit person to be intrusted with the management of an agricultural gang.

The justices (b) shall annex to their license a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work, and any gangmaster violating the condition so annexed to his license shall for each offence be liable to a penalty not exceeding ten shillings.

Any person aggrieved by the refusal of the justices (b) to grant him a license to act as gangmaster may appeal to the next practicable court of general or quarter sessions ; and it shall be lawful for such court, if they see cause, to grant a license to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions.

Renewal of licenses.

VIII. Licenses under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original license is granted.

Fees in respect of licenses.

IX. There shall be charged in respect of each grant or renewal of license a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the license are applicable.

License how affected by conviction of gangmasters.

X. On any conviction of a gangmaster on any offence against this Act the justices who convict him shall endorse on his license the fact of such conviction ; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his license for a period not exceeding three months ; and on any conviction of any gangmaster of a third offence against

(a) This sub-section, enacting that no child under the age of eight years should be employed in any agricultural gang, was repealed by section 16 of the Agricultural Children Act, 1873 (36 & 37 Vict. c. 67), which substituted an enactment raising the age to ten. But that Act is now itself repealed by the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), by section 5 of which the employment of children under ten is prohibited generally.

(b) Licenses are now granted by district councils and not by the justices. See the Local Government Act, 1894, s. 27, *ante*, p. 727.

this Act the justices may, in addition to any other penalty, withhold his license for a period not exceeding two years. **Appendix.**

And after a fourth conviction for an offence against this Act the gangmaster shall be disqualified from holding or receiving a license under this Act.

XI. All penalties under this Act may be recovered summarily before two or more justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intitled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders*, or any Act amending the same. Recovery of penalties. 11 & 12 Vict. c. 43.

XII. This Act shall not apply to *Scotland* or *Ireland*.

Extent of Act.

THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 VICT. CAP. 119.) (c)

An Act to amend the Law relating to Railways.

[31st July, 1868.]

* * * * *

Preliminary.

I. This Act may be cited as the Regulation of Railways Act, 1868.

* * * * *

Short title.

VI.—Arbitrations by Board of Trade.(d)

XXX. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade.(e) Arbitrator appointed by Board of Trade.

If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

XXXI. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them, and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade. Remuneration of arbitrator.

XXXII. The provisions of sections eighteen to twenty-nine, both inclusive, of the Railway Companies Arbitration Act, 1859,(f) shall, so far as is consistent with the Costs, &c., of arbitrations.

(e) The sections of this Act here set out are those which relate to arbitration, and are incorporated by section 63 of the Local Government Act, 1888, *ante*, p. 523, so as to apply to arbitrations by the Local Government Board under that Act. The preamble was repealed by the Statute Law Revision Act, 1893 (No. 1) (56 & 57 Vict. c. 14).

(d) For the Board of Trade it is necessary to read the Local Government Board, and for the company the county council, urban authority, or other party to the arbitration.

(e) Observe that the Board do not make the award. It is made by the arbitrator, and when made is to be deemed to have been made by the Board. See *In re Kent County Council and Sandgate Local Board* [1895], 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.) 725; 43 W. R. 601; 59 J. P. 456; 11 T. L. R. 421.

(f) 22 & 23 Vict. c. 59, s. 18, empowers the arbitrator to call for books and documents and administer oaths; section 19 gives him discretion as to the manner of proceeding with the arbitration; section 20 enables him to proceed in the absence of parties; section 21 enables him to make several awards each on part of the matters referred; section 22 makes the award conclusive; section 23 gives the arbitrator power to extend the time for making an award; section 24 prevents the setting aside of an award for irregularity; section 25 provides that parties shall obey awards; section 26, that all courts shall give effect to awards; section 27, that costs shall be in the discretion of the arbitrator; section 28, that in absence of order costs are to be borne by parties equally; and section 29, that submission may be made a rule of court.

Appendix. tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company ; and in construing those sections for the purpose of this Act the word “companies” shall be construed to mean the parties to the arbitration.

* * * * *

THE GAS AND WATER WORKS FACILITIES ACT, 1870.

(33 & 34 VICT. CAP. 70.)*(a)*.

An Act to facilitate in certain cases the obtaining of Powers for the Construction of Gas and Water Works, and for the Supply of Gas and Water. [9th August, 1870.]

* * * * *

Preliminary.

Short title. I. This Act may be cited for all purposes as “The Gas and Water Works Facilities Act, 1870.”

Interpretation of terms. II. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them ; (that is to say,)
The term “local authority” shall mean the bodies of persons named in the table in the Schedule (A.) to this Act annexed :
The term “road” shall mean any carriageway being a public highway, and any bridge forming part of the same :
The term “road authority” shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road :
The term “district,” in relation to a local authority, shall mean the area within the jurisdiction of such local authority :
The term “The Lands Clauses Acts” means, so far as the provisional order in which that term is used relates to England the Lands Clauses Consolidation Act, 1845 ; together with the Lands Clauses Consolidation Acts Amendment Act, 1860.*(b)*

Description of Cases within this Act.

Act to apply to certain cases. III. This Act shall apply where powers are required for all or any of the purposes following :
(1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or persons empowered by Act of Parliament to construct such works or to manufacture and supply gas :
(2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners, or persons empowered by Act of Parliament to construct such works and to supply water :
(3.) To raise additional capital necessary for any of the purposes aforesaid :
(4.) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings.
(5.) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply, and to amalgamate their undertakings :

(a) Incorporated with the Public Health Act, 1875, by section 161, *ante*, p. 224, for the purpose of enabling a local authority to supply gas, and amended by 36 & 37 Vict. c. 89, *post*. Preamble repealed by the Statute Law Revision Act, 1893 (No. 2), 56 & 57 Vict. c. 54.
(b) Words relating to Scotland and Ireland only are here omitted. See the statutes referred to, *ante*, pp. 808, 931.

and such purposes or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking," or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

Appendix.

Provisional Orders authorising Gas and Water Undertakings.

IV. Provisional orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the terms "the undertakers" shall be deemed to include any company, companies, or person.^(c)

By whom provisional orders authorising undertakings may be obtained.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any provisional order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority before any provisional order can be obtained, unless the Board of Trade^(d) in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry,^(e) that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

V. The undertakers intending to make an application for a provisional order in pursuance of this Act shall proceed as follows:—

Notices and deposit of documents by promoters as in schedule.

- (1.) On or before the 1st of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:
- (2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part I. of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees, or reputed lessees, and occupiers of all mills and manufactories or other works using the water of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:
- (3.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same schedule, according to the regulations therein contained:
- (4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same schedule, according to the regulations therein contained.

(c) See the Public Health Act, 1875, ss. 161, 316, *ante*, pp. 224, 410. This word applies to the urban sanitary authority. As to revocation, extension, or amendment of the provisional order, see 36 & 37 Vict. c. 89, s. 12, *post*.

(d) The Local Government Board are substituted for the Board of Trade in respect of any gasworks established by an urban authority. See the Public Health Act, 1875, s. 161, *ante*, p. 224.

(e) See 36 & 37 Vict. c. 89, s. 13, *post*.

Appendix.

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament;"^(a) and all the provisions of that Act shall apply accordingly.

Power for Board of Trade to determine on application and on objection.

VI. The Board of Trade shall consider the application, and also any objection thereto, that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application.^(b)

Power for Board of Trade to make provisional order.

VII. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a provisional order accordingly.

Every such provisional order if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Form and contents of provisional order.

Every such provisional order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act;^(c) but so that any such provisional order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited.

Costs of order.

The costs of and connected with the preparation and making of each provisional order shall be paid by the undertakers, and the Board of Trade may require the undertakers to give security for such costs before they proceed with the provisional order.

Publication of provisional order as in schedule.

VIII. When a provisional order has been made as aforesaid and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part IV. of the Schedule (B.) to this Act.

Confirmation of provisional order by Act of Parliament.

IX. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any provisional order which shall have been published as aforesaid, not later than the twenty-fifth of April^(d) in any year, procure a bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to the bill; but until confirmation by Act of Parliament a provisional order under this Act shall not have any operation.

If while any such bill is pending in either House of Parliament a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of Parliament confirming any provisional order under this Act shall be deemed a public general Act.

^(a) Now called the Parliamentary Documents Deposit Act, 1837 (7 Will. 4 & 1 Vict. c. 83).

^(b) Objections must be lodged on or before the 15th January next ensuing the making of the application. See the Order of the Local Government Board, dated 7th September, 1891 (St. R. & O., 1891, p. 308), and Appendix II., *post*. A local inquiry may be ordered under 36 & 37 Vict. c. 89, s. 13, *post*.

^(c) See section 9, *infra*.

^(d) It is considered that this date applies to the publication of the order, and not to the introduction of the bill into Parliament.

X. The provisions of the Lands Clauses Act shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted, by any such provisional order, and except as to the following provisions, namely,—

Appendix.
Incorporation of general Acts in provisional order.

(1.) With respect to the purchase and taking of lands otherwise than by agreement :

(2.) With respect to the entry upon lands by the promoters of the undertaking. Where a provisional order authorises a gas undertaking the provisions of "The Gasworks Clauses Act, 1847,"(e) shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

Where a provisional order authorises a water undertaking the provisions of "The Waterworks Clauses Act, 1847," and of "The Waterworks Clauses Act, 1863,"(f) shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.(g)

XI. If any undertakers empowered by any provisional order under this Act to make works do not, within three years from the date of such provisional order, or within any shorter period prescribed therein, complete the works ; or, Cesser of powers at expiration of prescribed time.

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the provisional order, the works are not substantially commenced ; or,

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension ;

the powers given by the provisional order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

XII. The undertakers empowered by any provisional order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such provisional order, rents and rates respectively not exceeding the sums specified, in such provisional order, subject and according to the regulations therein specified. Gas rents and water rates in schedule.

XIII. Nothing in any provisional order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act,(h) or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the provisional order. Company not exempt from provisions of general Act.

XIV. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for Her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of Her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connection with the Board of Trade shall be done by or in connection with such substituted department. Queen in Council may substitute any department for Board of Trade for the purposes of this Act.

XV. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855. Act not to apply to metropolis.

(e) 10 & 11 Vict. c. 15, *ante*, p. 862.

(f) 10 & 11 Vict. c. 17, *ante*, p. 871, and 26 & 27 Vict. c. 93, *ante*, p. 935.

(g) See also the Public Health Act, 1875, s. 316, *ante*, p. 410.

(h) See 36 & 37 Vict. c. 89, *post*.

Appendix.

SCHEDULE A.(a)

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
<i>England and Wales.</i>	
Boroughs (1.) - - - - -	The mayor, aldermen, and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.(b)	The local board.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.

(1.) "Borough" shall mean any place for the time being subject to an act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."(c)

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

[s. 5 (2), ante.]

Advertisement in October or November of intended Application.

- (1.) Every advertisement is to contain the following particulars :—
 1. The objects of the intended application.
 2. A general description of the nature of the proposed new works, if any.
 3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.
 4. The times and places at which the deposit under Part II. of this schedule will be made.
 5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order when made, will be obtainable as hereinafter provided.
- (2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.
- (3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(a) Parts of this Schedule relating only to Scotland or Ireland are here omitted.

(b) See the Public Health Act, 1875, s. 313, *ante*, p. 410.

(c) Now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) ; see section 243, sub-section (3), of that Act.

(4.) The advertisement is also, in every case, to be inserted once at least in the *London Gazette*, accordingly as the district is situate in England. . . . **Appendix.**

PART II.

Deposit on or before 30th November.

[s. 5 (3), *ante*.]

- (1.) The undertakers are to deposit—
 1. A copy of the advertisement published by them.
 2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
 3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.(d)
- (2.) The documents aforesaid are to be deposited for public inspection—

In England in the office of the clerk of the peace for every county, riding, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.
- (3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III.

Deposit on or before 23rd December.

[s. 5 (4), *ante*.]

- (1.) The undertakers are to deposit at the office of the Board of Trade—
 1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
 2. A printed draft of the provisional order as proposed by the undertakers, with any schedule referred to therein.
 3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.
- (3.) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :—

[Short title of Undertaking].

To the Board of Trade.

The memorial of the undertakers of *[short title of undertaking]* :
Showeth as follows :—

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement :

[Here advertisement to be set out verbatim].

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and *[here state deposit of the several matters required by Act]*.

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Undertakers.

(d) The Regulations now in force are dated 7th September, 1891, and will be found in the Statutory Rules and Orders, 1891, p. 308, and Appendix II., *post*.

Appendix.

PART IV.

[s. 8, *ante*.]*Deposit and Advertisement of Provisional Order when made.*

(1.) The undertakers are to deposit printed copies of the provisional order, when settled and made, for public inspection in the office of clerks of the peace where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

THE TRAMWAYS ACT, 1870.

(33 & 34 VICT. CAP. 78.)(a)

An Act to facilitate the Construction and to regulate the working of Tramways.

[9th August, 1870.]

Preliminary.

Short title.

I. This Act may be cited for all purposes as the "Tramways Act, 1870."

Limitation of Act.

II. This Act shall not extend to Ireland.

Interpretation of terms.

III. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them ; (that is to say,)

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part One of the Schedule (A.) to this Act annexed :

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same :

The term "road authority" shall mean, in the districts specified in the table in Part Two of the Schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road : (b)

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority :

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act :

The term "The Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England, the Lands Clauses Consolidation Act, 1845 ; together with the Lands Clauses Consolidation Acts Amendment Act, 1860 : (c)

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

(a) This Act gives to local authorities important powers with regard to tramways and tramway companies, and is, therefore, included in this Appendix. The preamble of the Act was repealed by the Statute Law Revision Act, 1893 (No. 2), 56 & 57 Vict. c. 54. The subject belongs rather to the law of highways than to that of public health, and the notes are, therefore, chiefly confined to references to decided cases.

(b) See *Wolverhampton Tramways Company, Limited, v. Great Western Railway Company*, cited in the note to section 32, *post*, p. 957.

An agreement between a county council and a highway authority such as a highway board, whereby the latter agree to maintain a main road under section 11 of the Local Government Act, 1888, *ante*, p. 490, does not affect the rights of the former as the road authority within the above definition. *Stockport and Hyde Highway Board v. Cheshire County Council*, 61 L. J. Q. B. 22 ; 65 L. T. (N.S.) 85 ; 39 W. R. 606 ; 55 J. P. 808.

(c) Words in this clause relating to Scotland only are here omitted. See the statutes referred to, *ante*, pp. 808, 931.

PART I.

Appendix.

Provisional Orders authorising the Construction of Tramways.

IV. Provisional orders(d) authorising the construction of tramways in any district may be obtained by—

By whom provisional orders authorising the construction of tramways may be obtained.

(1.) The local authority of such district ; or by—

(2.) Any person, persons, corporation, or company, with the consent of the local authority of such district ; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts :"(e)

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as "the promoters."

Applications for a provisional order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the Schedule A. to this Act annexed.

Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any provisional order can be obtained.

V. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade may, nevertheless, make a provisional order authorising the construction of such tramway if they are satisfied, after inquiry,(f) that two-thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto ; and in such case they shall make a special report stating the grounds upon which they have made such order.

The Board of Trade may in certain cases dispense with the consent of local or road authority.

VI. The promoters intending to make an application for a provisional order shall proceed as follows :—

Notices and deposit of documents by promoters as in schedule.

(1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement;(g) and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the standing orders (if any) of both Houses of Parliament for the time being in force with respect to bills for the construction of tramways :

(2.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same schedule, according to the regulations therein contained :

(3.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same schedule, according to the regulations therein contained :

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of His late Majesty King William the Fourth and the first year of Her present Majesty, intitled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament ;"(h) and all the provisions of that Act shall apply accordingly.

VII. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry(f) in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall

Power for Board of Trade to determine on application and on objection.

(d) Rules have been issued by the Board of Trade with respect to provisional orders under this Act. See section 64, *post*, p. 967, and notes thereto. The construction of a tramway without statutory authority may amount to a nuisance at common law. *Reg. v. Train*, 2 B. & S. 640 ; 31 L. J. M. C. 169 ; 10 W. R. 539 ; 9 Cox C. C. 180.

(e) *i.e.*, the Highway Acts, 1835 (5 & 6 Will. 4, c. 50), 1862 (25 & 26 Vict. c. 61), and 1864 (27 & 28 Vict. c. 101). See section 1 of the last-mentioned Act.

(f) As to local inquiries, see section 63, *post*, p. 967.

(g) See the form prescribed in Part I of Schedule (B.), *post*, a reference to which is obviously omitted here by an oversight.

(h) Now called the Parliamentary Documents Deposit Act, 1837 (7 Will. 4 & 1 Vict. c. 83).

Appendix.

consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, (a) and shall determine whether or not the promoters may proceed with the application.

Power for Board of Trade to make provisional order.

VIII. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a provisional order accordingly.

Form and contents of provisional order.

Every such provisional order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case think fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such provisional order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road, or upon land taken by agreement.

Regulations as to construction of tramways in towns.

IX. Every tramway in a town which is hereafter authorised by provisional order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorised by any provisional order to be so laid that for a distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one-third of the owners or one-third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from any tramway so laid. (b)

Nature of traffic on tramway and tolls to be specified in provisional order.

X. Every such provisional order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper. (c)

Costs of order.

XI. The costs of and connected with the preparation and making of each provisional order shall be paid by the promoters and the Board of Trade may require the promoters to give security for such costs before they proceed with the provisional order. (d)

Promoters to deposit 4l. per cent. on estimate in prescribed bank.

XII. After a provisional order is ready, and before the same is delivered by the Board of Trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money. (e)

(a) See the regulations made under section 64, *post*.

(b) The order will be good if it dispenses with the 9 ft. 6 in. limit in the absence of express dissent of the occupiers. *Edinburgh Street Tramways v. Black*, L. R. 2 Sc. App. 336; 37 J. P. 692.

(c) As to the conveyance of mails by tramways, see the Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38). In *Clogher Tramway Company Limited v. Reg.*, 30 L. R. Ir. 316, it was held that a steam tramway constructed by a company authorised thereto by provisional order, under the Tramways (Ireland) Act, 1860, confirmed by special Act, was not a railway within the meaning of the Post Office Parcels Act, 1882, and that the rights and liabilities of the company and the Postmaster-General respectively as regarded the conveyance of parcels thereon, were regulated solely by the special Act continuing the provisional order.

(d) These costs are to be taxed on the Chancery, and not on the Parliamentary, scale. *In re Morley*, L. R. 20 Eq. 17; 32 L. T. (N.S.) 524; 23 W. R. 532.

As to the costs of a Parliamentary agent employed by a promoter who is not mentioned in the Act and does not become a member of the company, see *Re Skegness, &c., Tramways Company*, 41 Ch. D. 215; 58 L. J. Ch. 737; 60 L. T. (N.S.) 406; 37 W. R. 225.

(e) See the Parliamentary Deposits and Bonds Act, 1892 (56 & 57 Vict. c. 27). The court has no jurisdiction under section 1 of the Parliamentary Deposits and Bonds Act,

XIII. When a provisional order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part IV. of the Schedule (B.) to this Act.

Appendix.

Publication of provisional order as in schedule.

Confirmation of provisional order by Act of Parliament.

XIV. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a bill to be introduced into either House of Parliament in relation to any provisional order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the provisional order, which shall be set out at length in the schedule to the bill; and until confirmation, with or without amendment, by Act of Parliament, a provisional order under this Act shall not have any operation.

If while any such bill is pending in either House of Parliament a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of Parliament confirming a provisional order under this Act shall be deemed a public general Act.

XV. The provisions of the Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely—

Incorporation of general Acts to provisional order.

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking:

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.

XVI. The Board of Trade on the application of any promoters empowered by a provisional order may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order.

Power of Board of Trade to revoke, amend, extend or vary provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order, and until such confirmation such further provisional order shall not have any operation.

XVII. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a provisional order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the provisional order may be adapted to the circumstances of the case.

Power to authorize joint work.

XVIII. If the promoters empowered by any provisional order under this Act to make a tramway, do not, within two years from the date of the same, or within

Cesser of powers at expiration of prescribed time.

1892, to order a transfer of the deposit fund until the time limited for the completion of the undertaking has expired. *Ex parte Chambers* [1893], 1 Ch. 47; 62 L. J. Ch. 78; 67 L. T. (N.S.) 647; 41 W. R. 170; 3 R. 118. The parliamentary deposit made by a tramway company that has failed to construct its tramway within the time limited and has been ordered to be wound up, is not a fund from which the liquidator is entitled to be paid his general costs of the winding up or his remuneration. *Re Colchester Tramways Company* [1893], 1 Ch. 309; 62 L. J. Ch. 243; 67 L. T. (N.S.) 846; 41 W. R. 169; 3 R. 168. Upon an application for payment out of court of the deposit, the tramway being abandoned, notice of abandonment under section 18 is the only evidence the court can receive. *Re Dudley and Kingswinford Tramways* [1893], W. N. 162; 63 L. J. Ch. 108; 69 L. T. (N.S.) 711; 42 W. R. 126. On abandonment of the undertaking the lenders of the sum deposited are now entitled to share in the distribution of the deposit *pari passu* with the other creditors. *Ex parte Bradford and District Tramways Company* [1893], 3 Ch. 463; 62 L. J. Ch. 668; 69 L. T. (N.S.) 131; 3 R. 640. As to the claim of solicitors and parliamentary agents for their costs, see *In re Manchester Tramways Company* [1893], 2 Ch. 638; 62 L. J. Ch. 652; 68 L. T. (N.S.) 820; 41 W. R. 631; 3 R. 533.



Appendix. any shorter period prescribed therein, complete the tramway and open it for public traffic ; or,

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the same, the works are not substantially commenced ; or

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension ;

the powers given by the provisional order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade, and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade in the *London or Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and open for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.(a)

Local authority
may lease or
take tolls.

XIX. When a tramway has been completed under the authority of a provisional order by any local authority, or where any local authority has under the provisions of this Act acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease, to be approved of by the Board of Trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised ; or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorised ; but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the Schedule (C.) to this Act annexed ; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade, by lease, demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry, if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees."

How expenses
to be defrayed.

XX. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a provisional order, and carrying into effect the purpose of such provisional order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount, and is by reason of such

(a) See notes to section 12, ante, p. 950.

Appendix.

limitation insufficient for the payment of such expenses, the Board of Trade, may, by the provisional order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses.

Such local authority may, for the purposes of such provisional order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purposes of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

- (1.) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade:
- (2.) The money may be borrowed for such time, not exceeding thirty years, as such local authority, with the sanction of the Board of Trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners^(b) shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

For the purposes of such incorporation, the terms "the special Act," and "the commissioners," shall be construed to mean respectively a provisional order under this Act, and the local authority.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such provisional order, and in repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorised thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such provisional order, there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramway authorised by such provisional order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied.

XXI. [*Metropolitan Board of Works*(c) may, for carrying provisional order into effect, create stock under *Metropolitan Board of Works (Loans) Act, 1869.*]

PART II.*Construction of Tramways.*(d)

XXII. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorised by any provisional order or Act of Parliament, and shall be incorporated with such provisional order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such provisional order or Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said provisional order or Act, and be construed therewith as forming one provisional order or Act, as the case may be.

As to incorporation of Parts II. and III. of this Act with provisional order and special Acts.

(b) 10 & 11 Vict. c. 16, ss. 75—88 inclusive.

(c) Now the London County Council. 51 & 52 Vict. c. 41, s. 40, sub-sect. (8).

(d) A tramway company authorised to construct and maintain tramways with all proper rails, plates, works, and conveniences connected therewith were, notwithstanding the powers contained in this Act, held liable for a nuisance created by smells arising from their stables. *Rapier v. London Tramways Company* [1893], 2 Ch. 588; 63 L. J. Ch. 36; 69 L. T. (N.S.) 361; 9 T. L. R. 59.

Appendix.**"Special Act:"**

XXIII. In Part II. and Part III. of this Act, the term "special Act" shall be construed to mean any Act of Parliament which shall be hereafter passed or any provisional order authorising the construction of a tramway, and with which the said parts of this Act shall be incorporated as aforesaid :

"Promoters:"

XXIV. The term "the promoters" shall mean any person, persons, corporation, company, or local authority authorised by special Act to construct a tramway.

Mode of formation of tramways.

XXV. Every tramway which is hereafter authorised by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramway of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road, and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner.(a)

Power to break up streets, &c.

XXVI. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations :—

1. They shall give to the road authority notice of their intention specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work :
2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority,(b) unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work :
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence :(b)
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Completion of works and reinstatement of road.

XXVII. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations, namely :

1. They shall, with all convenient speed, and in all cases within four weeks at the

(a) When the special Act directs compliance with deposited plans and sections, they are regarded as embodied in the statute. *Edinburgh Street Tramways Company v. Black*, L. R. 2 H. L. Sc. 336 ; 37 J. P. 692.

(b) See the note to section 28, *post*, p. 955.

most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby :

Appendix.

2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night :
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

XXVIII. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway. If the promoters abandon their undertaking or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling, material or rubbish occasioned by such work ; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night : Provided, always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days' notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters.(c)

Repair of part of road where tramway is laid.

XXIX. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expenses of such paving and keeping in repair.(d)

Road authority and promoters may contract for paving roads on which tramways are laid.

(c) The raising of sleepers and rails to the level of the road, or the raising of the stone packing to the level of the rails, is maintaining and keeping the road in good condition under this section, and does not require the superintendence of the road authority under section 26. *St. Luke's Vestry v. North Metropolitan Tramway Company*, 1 Q. B. D. 760 ; 35 L. T. (N.S.) 329 ; 40 J. P. 806. Where a company had statutory power to run tramecars by steam and had statutory running powers over the line of another company, it was held that this did not authorise them to run over that line when it was defective, and they were held liable in damages to a person who was injured through a car running off the line by reason of its being defective. *Sadler v. South Staffordshire, &c., Tramways Company*, 23 Q. B. D. 17 ; 58 L. J. Q. B. 421 ; 37 W. R. 582 ; 53 J. P. 694.

(d) Where a tramway company entered into contract with a road authority under this section for the repair of that portion of the road upon which the tramway was laid, it was held that the liability for damage occasioned by the non-repair of that part of the road which would, but for such contract, be cast by section 28 upon the tramway company, was transferred to the road authority. *Howitt v. Nottingham and District Tramways Company*,

Appendix.

Provision as to
gas and water
companies.

XXX. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where, and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions ; (that is to say,)

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give seven days' notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose, which notice the promoters are hereby required to give :
2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in the case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct :
3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs :
4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property or with the private service pipes of any person supplied by any such company or person with water or gas.
5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which such supply shall be so interrupted.

12 Q. B. D. 16 ; 53 L. J. Q. B. 21 ; 50 L. T. (N.S.) 99 ; 32 W. R. 248. This decision seems to have been questioned in *Steward v. North Metropolitan Tramways Company*, 16 Q. B. D. 556 ; 55 L. J. Q. B. 157 ; 54 L. T. (N.S.) 35 ; 34 W. R. 316 ; 50 J. P. 324 ; but it has since been followed in *Alfred v. West Metropolitan Tramways Company* [1891], 2 Q. B. 398 ; 60 L. J. Q. B. 631 ; 65 L. T. (N.S.) 138 ; 39 W. R. 609 ; 55 J. P. 824 ; 7 T. L. R. 609.

Appendix.

For protection of sewers, &c.

XXXI. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days' previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers, or works.

Rights of authorities and companies, &c., to open roads.

XXXII. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; (that is to say,)

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
2. Before they commence any work whereby the traffic on the tramways will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:
5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters.(a)

(a) A railway company who are liable to maintain and repair a bridge over their line, with the approaches and the road thereon, are in respect of such road a road authority within

Appendix.

Difference
between pro-
motors and road
authority, &c.

XXXIII. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.(a)

PART III.

GENERAL PROVISIONS.

Carriages.

Power for pro-
motors to use
tramways with
flange-wheeled
carriages, &c.

XXXIV. The promoters of tramways authorised by special Act and their lessees may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail.(b)

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.(c)

the meaning of this section. Where a railway company for the re-construction of such a bridge had, after giving the notices specified by this section, removed the rails of a tramway running over the bridge, and temporarily stopped the traffic, it was held that they were not liable to the tramway company for injury to the tramway, loss of traffic, or cost of reinstating the rails, provided they had caused as little detriment or inconvenience as the circumstances admitted. It was held also that if they caused more than the least detriment and inconvenience which the circumstances admitted, they would be liable to the extent by which they had exceeded such least possible detriment and inconvenience. *Wolverhampton Tramways Company, Limited, v. Great Western Railway Company*, 56 L. J. Q. B. 191; 3 T. L. R. 197; 56 L. T. (N.S.) 892.

(a) By a local Tramway Act incorporating the above Act, the space between the rails and for a distance of eighteen inches beyond each external rail was to be paved by the company, to the satisfaction of the local authority, with wood or other paving to be approved of by the local authority. On an application by the local authority for a *mandamus* to the company to take up the paving so laid down, it was held that a difference had arisen within the meaning of the above section which ought to be determined by a referee appointed by the Board of Trade, and that the *mandamus* ought not to be granted. *Reg. v. Croydon and Norwood Tramways Company*, 18 Q. B. D. 39; 56 L. J. Q. B. 125; 56 L. T. (N.S.) 78; 35 W. R. 299; 51 J. P. 420. A municipal corporation, as being the road and the local authority, proposed to alter a road within their district on which a tramway had been constructed under this Act, by taking up the existing granite pavement and laying down a wood pavement over the whole of the roadway including the space between the rails of the tramway and eighteen inches on each side thereof. The company objected to the alteration so far as it concerned the last-mentioned portion of the roadway and claimed to refer the matter under the above section. It was held that the difference was not one within the section, inasmuch as it was not with respect to any interference or control claimed to be exercised by the road authority by virtue of the Act, or to any subject or thing regulated by or comprised in the Act; but with respect to the exercise of a power which belonged to the road authority independently of the Act and was preserved by section 60. *Bristol Trams and Carriage Company v. Bristol (Mayor, &c., of)* 25 Q. B. D. 427; 59 L. J. Q. B. 441; 63 L. T. (N.S.) 177; 38 W. R. 693; 55 J. P. 53; 6 T. L. R. 371.

(b) The promoters are consequently occupiers of the land which is *de facto* occupied by the tramway, and, therefore, they are rateable. *Pimlico, Peckham, and Greenwich Street Tramways Company v. Greenwich Union*, L. R. 9 Q. B. 9; 43 L. J. M. C. 29; 38 J. P. 117. *Craig v. Edinburgh Street Tramways Company*, 1 Ct. Sess. Cas. (4th ser.), 947; 11 Scottish Law Reporter, 541.

(c) A locomotive used upon a tramway under a special Act is not subject to the provisions

No carriage used on any tramway which is hereafter authorised by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

Appendix.

Licenses to use Tramways.

XXXV. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the Board of Trade by the local authority of such district or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, *prima facie*, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the Board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorised by the special Act, with carriages to be approved by the Board, subject to the following provisions, conditions, and restrictions; (that is to say,)

Licenses to use the tramway may in certain events be granted to third parties by the Board of Trade.

1. The license shall be for any period not less than one year nor more than three years from the date of the license, but shall be renewable by the Board, if they upon inquiry think fit:
2. The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the Board, having reference to the cause for granting the license, shall think right:
3. The license shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run:
4. The licenses shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorised for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey:
6. The Board of Trade may, at any time, after the granting of any license, revoke, alter, or modify the same for good cause shown to them.

XXXVI. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

In default of payment of tolls licensee's carriages may be detained and sold.

XXXVII. Every licensee shall on demand give to an officer or servant authorised in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licenses to give account of passengers carried by them.

XXXVIII. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Licenses not giving account of passengers carried liable to penalty.

XXXIX. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees from any licensee, or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices and it shall be lawful for the promoters or their lessees in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof.(d)

Disputes as to amount of toll to be settled by justices.

of the Highway Act, 1878 (41 & 42 Vict. c. 77), *post*. *Bell v. Stockton and Darlington Steam Tramways Company*, 3 T. L. R. 511; 51 J. P. 804.

(d) Words relating to Scotland only are omitted from this section.

Appendix.

Owners of
carriages liable
for damage done
by their
servants.

XL. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices . . . either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds.

Discontinuance of Tramways.

Tramways to be
removed in
certain cases.

XLL. If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Board of Trade, the said Board, if they think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such order has been made, the road authority of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Board of Trade, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorised officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons as the road authority may think fit, and may, out of the proceeds of such sale, pay and reimburse themselves the amount of the cost certified as aforesaid, and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

Insolvency of Promoters.(a)

Proceedings in
case of insol-
vency of pro-
moters.

XLII. If at any time after the opening of any tramways in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such

(a) An unregistered tramway company, incorporated by a special Act, does not fall within the exception of "railway companies incorporated by Act of Parliament," in section 199 of the Companies Act, 1862, and it may, therefore, be wound up under that section. *Re Brentford and Isleworth Tramways Company*, 26 Ch. D. 527; 53 L. J. Ch. 624; 50 L. T. (N.S.) 580; 32 W. R. 895. And see *Portsmouth, &c., Tramways Company, in re* [1892], 2 Ch. 362; 61 L. J. Ch. 462; 66 L. T. (N.S.) 471; 40 W. R. 553. A company being in liquidation, the Board of Trade, under this section, directed an inquiry to ascertain the solvency of the promoters. It was held, upon application by the official liquidator for an injunction to restrain the inquiry, that it was not a proceeding against the company, and could not be restrained under section 87 of the Companies Act, 1862. *Re Pontypridd and Rhondda Valley Tramways Company*, 58 L. J. Ch. 536; 37 W. R. 570.

Where a petition is presented for winding up a company, the court has power to restrain proceedings before magistrates for penalties against the company. *Re Briton Medical, &c., Association*, 32 Ch. D. 503; 55 L. J. Ch. 416; 54 L. T. (N.S.) 152; 34 W. R. 390.

It was held that although the company had not been ordered to be wound up, the court would appoint a receiver and manager in an action brought by a holder of overdue debentures of the company to realise his security. *Bartlett v. West Metropolitan Tramways Company* (No. 1) [1893], 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. (N.S.) 560. And it was further held on a subsequent application by the receiver, that the court had power under this section and section 44 to make an order for sale of the company's property as a going

tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board of Trade, the Board of Trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

Appendix.

Purchase of Tramways.

XLIII. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made by the Board of Trade, under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, (b) or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) (c) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon

Future purchase of undertaking by local authority.

concern. *Bartlett v. West Metropolitan Tramways Company* (No. 2) [1894], 2 Ch. 286; 63 L. J. Ch. 519; 70 L. T. 494; 42 W. R. 500; 8 R. 259. But this latter decision was overruled in *Marshall v. South Staffordshire Tramways Company* [1895], 2 Ch. 36; 64 L. J. Ch. 481; 72 L. T. 542; 43 W. R. 469; 11 T. L. R. 339, where it was held that the holders of debentures issued by a tramway company governed by this Act (whether incorporated under the Companies Act, 1862, or under a special Act), by which debentures the undertaking of the company and all its property, present and future, including uncalled capital, are charged, are in the event of default by the company entitled only to the appointment of a receiver of the undertaking of the company and the net earnings thereof; and are not entitled to an order for the sale of the undertaking or to the appointment of a manager.

(b) This word is limited by reference to the tramway previously mentioned, viz., the particular tramway which the promoters are empowered to construct by any special Act or provisional order. Therefore, where a tramway company has constructed a number of lines under special Acts passed in different years, the local authority may (subject to the leave of the Board of Trade being obtained) purchase so much of any one line as is within its district at the expiration of twenty-one years from the time when the promoters were empowered to construct the line, together with the undertaking so far as it relates to that particular line, without purchasing the other lines constructed under different special Acts. *North Metropolitan Tramways Company v. London County Council* [1895], W. N. 91; 30 L. J. Notes, 339; 11 T. L. R. 419; 72 L. T. (N.S.) 586; 43 W. R. 552.

(c) The value of the tramway upon a compulsory sale to the local authority must be measured by what it would cost to construct it at the date of such sale, subject to a proper deduction in respect of depreciation. *Edinburgh Street Tramways Company v. Lord Provost of the City of Edinburgh and London County Council v. London Street Tramways Company* [1894], A. C. 456, 489; 63 L. J. Q. B. 769; 71 L. T. (N.S.) 301.

Appendix. them by a provisional order under this Act, and in reference to the same they shall be deemed to be the promoters.

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution.(a)

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any provisional order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board of Trade may, by provisional order, extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

Every such provisional order shall be confirmed in like manner as a provisional order under the authority of Part I. of this Act, and until such confirmation, such provisional order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

Power of sale.

XLIV. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade, sell their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters.

Provided always that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorised.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

Tolls.

Tolls, &c.

XLV. The promoters or lessees of a tramway authorised by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways.

Bye-laws.

Bye-laws by local authority.

XLVI. Subject to the provisions of the special Act authorising any tramway and this Act,

(a) The remainder of this paragraph applies in Scotland only, and is therefore omitted.

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters :—

The rate of speed to be observed in travelling upon the tramway :

The distances at which carriages using the tramway shall be allowed to follow one after the other :

The stoppage of carriages using the tramway : (b)

The traffic on the road in which the tramway is laid : (c)

The promoters of any tramway and their lessees may from time to time make regulations,—

Promoters may make certain regulations.

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them :

For regulating the travelling in or upon any carriage belonging to them. (d)

And for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws,

(b) A bye-law required that a steam tramway should be stopped in cases of impending danger. It was held that there was evidence of impending danger to go to the jury in a case where a steam tram was coming down a steep incline towards a pony chaise, the pony being restive, and the driver holding up her whip as a signal to stop the car. *Downing v. Birmingham and Midland Trams*, 5 T. L. R. 40. A local Tramway Act empowered the Board of Trade to make bye-laws, providing that engines should be brought to a stand at cross streets, and the penalty was imposed on any person offending. It was held that the company might be convicted of an offence against the bye-law. *St. Helen's Tramway Company v. Wood* (No. 2), 56 J. P. 71.

(c) The Board of Trade under a power given to them by a special Act, made a bye-law that "no steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to passengers or to the public." H., a driver, was resting his engine which was not in good repair, and he could not help emitting steam. One person complained. It was held that H. was rightly convicted. *Hartley v. Wilkinson*, 49 J. P. 726. Under a similar bye-law forbidding the emission of "smoke or steam," a conviction for emitting "smoke and steam" was upheld. *Davis v. Loach*, 50 J. P. 212. Where a bye-law provided that no smoke or steam should be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public, and the penalty was the same whichever class of persons had ground of complaint, and a conviction stated that the defendant permitted smoke to escape contrary to the bye-law, without stating in terms any reasonable ground of complaint to the passengers or the public, or either of them, it was held that the statement was insufficient, and the conviction must be quashed. *Cotterill v. Lempiere*, 24 Q. B. D. 634 ; 59 L. J. Q. B. 133 ; 62 L. T. (N.S.) 695 ; 54 J. P. 583 ; 6 T. L. R. 262. A tramway company were authorised to use steam engines on their line, and the Board of Trade were authorised to make regulations, and also to make bye-laws for regulating the use of bells, whistles, and other warning apparatus fixed to the engine. The Board of Trade made a regulation that every engine should carry a bright lamp during certain hours. One day, a servant allowed the lamp to remain unlighted for some part of the journey. It was held that the regulation was valid as a regulation and need not be included in the bye-laws, and that the company were liable for the neglect of the servant in not keeping the lamp alight. *St. Helen's Tramway Company v. Wood* (No. 1), 60 L. J. M. C. 141 ; 56 J. P. 70.

(d) A bye-law requiring payment of a fare when demanded, though before completion of journey, is valid. *Egginton v. Pearl*, 33 L. T. (N.S.) 428 ; 40 J. P. 56. As to amount of fares, see *Edinburgh Street Tramways Company v. Torbain*, 3 App. Cas. 58 ; 37 L. T. (N.S.) 288. A bye-law that a passenger shall deliver up his ticket when required, or pay the fare for the distance travelled over, is a reasonable bye-law. A passenger travelling under such circumstances, who shows his ticket but refuses to give it up on the ground that his journey has not terminated, is liable to the penalty prescribed by the bye-law. *Heap v. Day*, 34 W. R. 627 ; 51 J. P. 213. So also is a passenger who has lost his ticket and refuses to pay the fare again (*Hanks v. Bridgman*, W. N. (1896) 15 (12)), or a passenger who refuses to show his ticket. *Lowe v. Volp*, W. N. (1896), 20 (13). The secretary of a tram company was summoned for allowing an excessive number of passengers in a car. At the hearing, it was objected that the secretary was not the proper defendant, whereupon the justices substituted the name of the company, and convicted them. It was held that the conviction was bad. *Oxford Tramway Company v. Sankey*, 54 J. P. 52 ; 6 T. L. R. 151. Where a bye-law forbade the company to allow more persons to be carried in a carriage than a specified number, it was held that a passenger who was incommoded by an excessive number of passengers was entitled to prosecute the conductor. *Badcock v. Sankey*, 54 J. P. 564 ; 6 T. L. R. 170. A local Act provided that no conductor should carry in or on the carriage a greater number of passengers than that specified in the license. A license was granted in respect of a carriage to carry 32, 16 inside and 16 outside. It was held that a conductor was guilty of an offence by carrying 19 seated and eight standing inside, and five on the footboard, making altogether 32. *Stokell v. Baldwin*, 8 T. L. R. 346.

Appendix.

and make new bye-laws, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect.

Notice of the making of any bye-law under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of Schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such bye-law shall be disallowed by the Board of Trade.

No such bye-law shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such bye-law shall have been laid before the board, and a true copy of every such proposed bye-law shall, not less than two calendar months before such bye-law shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

Penalties may be imposed in bye-laws.

XLVII. Any such bye-law may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues; (a) but all bye-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

Power to local authority to license drivers, conductors, &c.

XLVIII. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages; (b) and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connection therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers of this section conferred upon the local authority.

Offences.

Penalty for obstruction of promoters in laying out tramway.

XLIX. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for wilful injury or obstruction to tramways, &c.

L. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon; (c)

(a) Penalties cannot be imposed in advance. *Reg. v. Struvé*, 59 J. P. 484.

(b) See section 171 of the Public Health Act, 1875, *ante*, p. 235; sections 37 *et seq.* and 68 of the Town Police Clauses Act, 1847, *ante*, p. 922, and 52 & 53 Vict. c. 14, *post*. As to the confirmation of these regulations, see 47 Vict. c. 12, *ante*, p. 474, which abrogates the effect of the case of *Wallasey Tramway Company v. Wallasey Local Board*, 47 J. P. 821.

The local authority of a borough may make a bye-law under this section for regulating the number of passengers to be carried in and upon tramcars, and the extent of accommodation to be afforded to them. The assent of the lessees of the line under section 46 is not necessary to the validity of such bye-law. *Smith v. Butler*, 16 Q. B. D. 349; 34 W. R. 416 50 J. P. 260.

(c) This provision does not affect the right of the public to the use of the street so long as there is no wilful obstruction. The mere presence of a cart upon a tramway line, whereby a tramcar has to proceed for some distance at a walking pace, is not necessarily a wilful obstruction. *Hall v. Linton*, 7 Ct. of Sess. Cas. (4th ser.) J. C., p. 2; 17 Scottish Law Reporter, 37.

Or knowingly aids or assists in the doing of any such thing ;
he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

Appendix.

LI. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings.(d)

Penalty on passengers practising frauds on the promoters.

LII. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law.(e)

Transient offenders.

LIII. No person shall be entitled to carry or require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence, and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.(f)

Penalty for bringing dangerous goods on the tramway.

LIV. If any person (except under a lease from or by agreement with the promoters, or under license from the Board of Trade, as by this Act provided) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds.(g)

Penalty for persons using tramways with carriages with flange wheels, &c.

Miscellaneous.

LV. The promoters or lessees, as the case may be, shall be answerable for all accidents, damages, and injuries happening through their act or default, or through

Promoters or lessees to be responsible for all damages.

(d) Proceedings under this section are of a criminal character, and, therefore, the company are liable to an action for malicious prosecution at the suit of a person against whom a summons under this section has been dismissed. *Rayson v. South London Tramways Company* [1893], 2 Q. B. 304; 62 L. J. Q. B. 593; 69 L. T. 491; 42 W. R. 21; 58 J. P. 20; 4 R. 522.

(e) See *Howitt v. Nottingham Tramways Company*, ante, p. 955. The plaintiff was a passenger in one of the defendants' trams, and tendered to the conductor in payment of a fare a half-sovereign, which the conductor supposed to be counterfeit, and he therefore gave the plaintiff in charge to the police. It was held that as this section gave the conductor authority to detain a person attempting to defraud, the company were liable for his acts in an action for false imprisonment. *Furlong v. South London Tramways Company*, 48 J. P. 329. But where the conductor had printed instructions not to give passengers into custody under this section without the authority of an inspector or time keeper except in cases of assault, but a conductor without such authority gave a passenger in charge for passing bad money it was held that the company were not liable. *Charleston v. London Tramways Company*, 36 W. R. 367; 4 T. L. R. 157; affirmed in C. A. 32 Solicitors' Journal 557; 4 T. L. R. 629. As to the liability of the company for an assault by a conductor on a passenger delaying to pay his fare, see *Smith v. North Metropolitan Tramways Company*, 55 J. P. 630; 7 T. L. R. 459.

(f) It seems that a person cannot be convicted of sending dangerous goods under this section unless guilty knowledge is proved. *Hearne v. Garton*, 28 L. J. M. C. 216.

(g) A contrivance whereby a small disc might be let down into the groove of the rail, and thus operate as a flange, was held to be within this section. *Cottam v. Guest*, 6 Q. B. D. 70; 50 L. J. Q. B. 174; 29 W. R. 305; 45 J. P. 95. See also *Liverpool Tramways v. Liverpool Omnibus Company*, W. N. (1870) p. 126; *Manchester (Mayor, &c., of) v. Andrews*, 5 T. L. R. 470.

Appendix.

the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.(a)

Recovery of
tolls, penalties,
&c.

LV1. All tolls, penalties, and charges under this Act, or under any bye-law made in pursuance of this Act, may be recovered and enforced as follows: in England before two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," and any Act amending the same. . . . (b)

Right of user
only.

LVII. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway. . . . (c)

* * * * *

Reservation of
rights of
owners, &c., of
mines.

LIX. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

Reserving
powers of street
authorities to
widen, &c.,
roads.

LX. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.(d)

Power for local
or police author-
ities to regulate
traffic in
roads.

LXI. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Reservation of
right of public
to use roads.

LXII. Nothing in this Act, or in any bye-law made under this Act, shall take away or abridge the right of the public to pass along or across every or any part of

(a) This section only applies to a wrongful act or default and does not make the promoters or lessees answerable for mere accident caused without negligence by their use of tramcars. *Brooklehurst v. Manchester, Bury, Rochdale, and Oldham Steam Tramways Company*, 17 Q. B. D. 118; 55 L. T. (N.S.) 406; 35 W. R. 568. But it is otherwise if negligence be proved. See *Sadler v. South Staffordshire, &c., Tramways Company*, ante, p. 955. A cab had stopped to take up a passenger in a steep and narrow street; one of its wheels rested upon a tramway rail. The driver of a tramway car proceeding down the incline saw the obstruction fifty yards away and whistled. He was going slowly, but he did not stop his car, because he expected up to the last moment that the cab would be drawn out of his way, and then, from the steepness and greasiness of the street, was unable to do so. The car caught the cab, and damaged both it and its horse. In an action for damages against the company, it was held that the driver, was in fault in not stopping his car when he first saw the cab, and that the cabman was not guilty of any contributory negligence. *McDermid v. Edinburgh Street Tramways Company*, 12 Ct. of Sess. Cas., 4th series, 15; 22 Scottish Law Reporter, 13. A tramway company acting under provisional order and using the best known system of electrical traction were held not to be liable for electrical disturbance in the wires of a telephone company under license from the Postmaster-General. *National Telephone Company v. Baker* [1893], 2 Ch. 186; 62 L. J. Ch. 699; 68 L. T. 383; 57 J. P. 373; 3 R. 318.

(b) The remainder of this section relates only to Scotland. As to restraining proceedings against a company in liquidation, see *Re Briton, Medical, &c., Association*, ante, p. 960.

The principle of *Gardner v. London, Chatham, and Dover Railway Company*, L. R. 2 Ch. 201, does not prevent the levying by distress of penalties imposed on a tramway company for non-repair of their rails. *Pegge v. Neath District Tramways Company* [1895], 2 Ch. 508; 64 L. J. Ch. 737; 73 L. T. (N.S.) 25; 11 T. L. R. 470.

(c) The remainder of this section (as to turnpike roads) and the whole of the following section (as to arrangements between turnpike trustees and the promoters) were repealed as obsolete by the Statute Law Revision Act, 1893 (No. 2) (56 & 57 Vict. c. 54).

(d) See *Bristol Tram and Carriage Company v. Bristol (Mayor of, &c.)*, ante, p. 958.

any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway.^(e)

Appendix.

LXIII. Every inquiry which by this Act the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions :—

Regulating inquiries before referee appointed by the Board of Trade.

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the Board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him :
2. Ten days' notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit :
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds : Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :
5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry :
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury :
7. The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

LXIV. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters :^(f)

Rules for carrying Act into effect.

1. The proceedings to be had before the Board under this Act :
2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits :
3. The plans and sections of any works to be deposited by promoters under this Act :
4. As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

(e) This section reserves to the public the right of using every part of the road including the rail so long as they do not use wheels with flanges, or wheels suitable only to the rails. *Manchester (Mayor, &c., of) v. Andrews*, 5 T. L. R. 470.

(f) Rules have been made under this section, those now in force being dated August, 1886. As to the construction of such rules, see *In re Bradford Tramways Company*, 4 Ch. D. 18 ; 46 L. J. Ch. 89 ; 35 L. T. (N.S.) 827 ; 25 W. R. 88 ; *In re Lowestoft, Yarmouth, and Southwold Tramways Company*, 6 Ch. D. 484 ; 46 L. J. Ch. 393 ; 36 L. T. (N.S.) 578 ; 25 W. R. 525 ; *In re Tynemouth Borough Tramways Company*, 33 L. T. (N.S.) 8 ; *In re Colchester Tramways Company*, ante, p. 950.

Appendix.

SCHEDULE A.(a)

PART I.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
ENGLAND AND WALES.		
The city of London and the liberties thereof.	The mayor, aldermen, and commons of the city of London.	The consolidated sewers rate.
The metropolis (1.) - - -	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2.) - - -	The mayor, aldermen, and burgesses acting by the council.	The borough fund or other property applicable to the purposes of a borough rate or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.(c)	The local board - -	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.

Notes.

- (1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.
- (2.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales."(b)

(a) So much of this schedule as relates to Scotland only is omitted.

(b) Now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) ; see section 242 of that Act.

(c) Now the Public Health Act, 1875 ; see section 313 of that Act, ante, p. 410.

PART II.

Appendix.

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1.) mentioned in Schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the metropolis (1.) formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.

Note (1.)—The term “metropolis” has in this part the same meaning as in Part I. of this schedule.

PART III.

Approval of Application by Local Authority for a Provisional Order.

The approval of any intended application for a provisional order by a local authority shall be in manner following : (that is to say,)

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution. Where any such resolution relating to the metropolis as the same is defined in Part I. of this schedule has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.(d)

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of intended application.

(1.) Every advertisement is to contain the following particulars :—

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the

(d) Words relating to Scotland only are here omitted.

Appendix. proposed undertaking, where the proposed works (if any) will be made ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the *London Gazette*, accordingly as the district is situate in England.(a)

PART II.

Deposit on or before 30th November.

- (1.) The promoters are to deposit :—
 1. A copy of the advertisement published by them.
 2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.
- (2.) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made(a)
- (3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III.

Deposit on or before 23rd December.

- (1.) The promoters are to deposit at the office of the Board of Trade—
 1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
 2. A printed draft of the provisional order as proposed by the promoters, with any schedule referred to therein.
 3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.
- (2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement ; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.
- (3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :

[Short Title of Undertaking.]

To the Board of Trade,

The memorial of the promoters of [*short title of undertaking*]:
Showeth as follows :

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement :

[Here advertisement to be set out verbatim.]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,

C. D.,

Promoters.

(a) Words relating to Scotland only are here omitted.

PART IV.

Deposit and Advertisement of Provisional Order when made.

(1.) The promoters are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace(a) where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district.

SCHEDULE C.

PART I.

Notice and Deposit of Lease by Local Authority.

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

(1.) Every advertisement is to contain—

1. The term of the lease.

2. The rent reserved.

3. A general description of the covenants and conditions contained therein.

4. The place where the same is deposited for public inspection.

(2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3.) The advertisement is also, in every case, to be inserted once at least in the *London Gazette*, accordingly as the district to which it relates is situate in England (a)

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

PART II.

Notice of Bye-laws.

Within one month after the making of any bye-law notice of the making of the same, and a copy of such bye-law, shall be published by advertisement in manner following:

(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such bye-law; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district or some part thereof is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2.) The advertisement is also, in every case, to be inserted once at least in the *London Gazette*, accordingly as the district to which it relates is situate in England (a)

Appendix.

THE FAIRS ACT, 1871.

(34 & 35 VICT. CAP. 12.)(a)

An Act to further amend the law relating to Fairs in England and Wales.

[25th May, 1871.]

* * * * *

Title. I. This Act may cited as "The Fairs Act, 1871."

Definition of
"owner."

II. In this Act the term "owner" means any person or persons, or body of commissioners, or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent, or Act of Parliament, or otherwise howsoever.

Secretary of State may, on representation of magistrates, with consent of owner, order fair to be abolished.

III. In case it shall appear to the Secretary of State for the Home Department, upon representation duly made to him by the magistrates of any petty sessional district(b) within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be abolished, it shall be lawful for the said Secretary of State for the Home Department, with the previous consent in writing of the owner for the time being of such fair, or of the tolls or dues payable in respect thereof, to order that such fair shall be abolished accordingly: Provided always, that notice of such representation, and of the time when it shall please the Secretary of State for the Home Department to take the same into consideration, shall be published once in the *London Gazette*, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered.

Notice of representation to be published in newspapers.

Order of Secretary of State to be published in newspaper.

IV. When and so soon as any such order as aforesaid shall have been made by the Secretary of State for the Home Department, notice of the making of the same shall be published in the *London Gazette*, and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall be abolished.

THE GASWORKS CLAUSES ACT, 1871.

(34 & 35 VICT. CAP. 41.)(c)

An Act to amend the Gasworks Clauses Act, 1847.

[13th July, 1871.]

* * * * *

10 & 11 Vict. c. 15, and this Act to be construed together.

I. The Gasworks Clauses Act, 1847, and this Act, shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act.

Short title.

II. This Act may be cited as "The Gasworks Clauses Act, 1871."

Application of Act.

III. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any provisional order made under the authority of the Gas and Water Works Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or provisional order; and

(a) See the Local Government Act, 1894, ss. 27 (1) (e) and 32, *ante*, pp. 727, 730. See also 36 & 37 Vict. c. 37, *post*. The preamble and clause of enactment to this Act are repealed by the Statute Law Revision Act, 1893 (No. 2) (56 & 57 Vict. c. 54).

(b) This representation will now come from the district council.

(c) See 10 & 11 Vict. c. 15, note (a), *ante*, p. 862. The preamble to this Act is repealed by the Statute Law Revision Act, 1893 (No. 2) (56 & 57 Vict. c. 54).

every such special Act and provisional order is in this Act included in the term "the special Act."^(d) **Appendix.**

IV. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870. **Interpretation of terms.**

The term "prescribed" in this Act shall mean prescribed by the special Act :

The term "premises" in this Act shall include house and building :

And the expression "superior courts" or "court of competent jurisdiction" in this Act, or in any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by a statute.

General Provisions.

V. The undertakers shall not manufacture gas, or any residual products, except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored. **Prohibition against erecting gasworks elsewhere than on lands specified in schedule.**

VI. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking, and the provisions of "The Lands Clauses Consolidation Act, 1845," sections 128 to 132 (both sections inclusive), shall apply to any such sale ;^(e) and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking. **Sale of superfluous lands.**

VII. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers for the same. **Receipts of guardians, &c., to be sufficient discharge.**

VIII. The mortgagees of the undertakers may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England by the appointment of a receiver ; and in order to authorise the appointment of a receiver in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than in the whole one thousand pounds, or such sum as shall be specified in the special Act.^(f) **For appointment of receiver.**

IX. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them. **Undertakers not exempted from indictment.**

X. Persons empowered by "The Lands Clauses Consolidation Act, 1845," to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act and of "The Lands Clauses Consolidation Acts Amendment Act, 1860," grant to the undertakers any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands ; and the provisions of the last-mentioned Acts with respect to lands and rentcharges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easement, rights, or privileges as aforesaid.^(g) **Power to take easements, &c., by agreement.**

(d) The effect of sections 1 and 3 is that this Act is incorporated with special Acts passed before 1871 which incorporate the Act of 1847. *Commercial Gas Company v. Scott*, L. R. 10 Q. B. 400 ; 44 L. J. M. C. 171 ; 32 L. T. (N.S.) 765 ; 23 W. R. 874 ; 40 J. P. P. 214 ; *Dudley Gaslight Company v. Warmington*, 50 L. J. M. C. 69 ; 44 L. T. (N.S.) 475 ; 29 W. R. 680 ; 45 J. P. 649 ; *South Metropolitan Gas Company v. Noakes*, 61 L. T. (N.S.) 556 ; 5 T. L. R. 448. See also *Leamington Priors Gas Company v. Davis*, cited in the note to section 35, *post*.

(e) See these sections, *ante*, p. 838.

(f) Words relating to Scotland and Ireland only are omitted from this section.

(g) See the 8 & 9 Vict. c. 18, s. 7, *ante*, p. 810.

Appendix.

Supply of Gas to Owners and Occupiers of Premises.

Undertakers to furnish sufficient supply of gas to owners and occupiers within the limits of the special Act.

XI. The undertakers shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards of any main of the undertakers or such other distance as may be prescribed, (a) give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe that may be necessary for such purpose, subject to the conditions following; (that is to say,)

The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of gas shall—

Serve a notice upon the undertakers at their office specifying the premises in respect of which such supply is required, and the day (not being an earlier day than a reasonable time (b) after the date of the service of such notice) upon which such supply is required to commence:

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that the rent payable for the same shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply; and

Give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of gas for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues. (c)

Quality of gas.

XII. The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound, and such gas shall, as to its purity, not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed in that behalf in Part II. of the Schedule A. to this Act annexed.

Undertakers may require consumers to use meters.

22 & 23 Vict. c. 66.

XIII. Every consumer of gas supplied by the undertakers shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of an Act passed in the session of Parliament held in the twenty-second and twenty-third years of the reign of Her present Majesty, intituled "An Act for regulating Measures used in Sales of Gas," and being a legal meter within the meaning of the said Act, or

(a) Upon the true construction of section 6 of the Metropolis Gas Act, 1860, a gas company is prohibited from furnishing to a customer a supply of gas for the purpose of consumption by him within a district assigned to another company, notwithstanding that the part of the customer's property through which the supply passes is within the district assigned to the company desirous of furnishing the supply. *Gas Light and Coke Company v. South Metropolitan Gas Company*, 62 L. J. Ch. 123; 62 L. T. (N.S.) 126; 54 J. P. 373.

(b) See, as to what is a reasonable time, *South Metropolitan Gas Company v. Noakes*, 61 L. T. (N.S.) 556; 5 T. L. R. 448.

(c) If the owner of premises be adjudicated a bankrupt, the official receiver is not entitled to call on the company to continue the supply of gas, and where he has paid arrears of gas rates under protest in order to avoid the cutting off of the supply, the trustee in bankruptcy cannot recover back the arrears so paid from the gas company. *Ex parte Mason, In re Smith* [1893], 1 Q. B. 323; 67 L. T. 596; 41 W. R. 159; 57 J. P. 72; 9 Morell Bkcy. Rep. 304.

by a meter supplied or approved by the undertakers : Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same shall be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which, when duly tested according to the rules contained in the said Act for regulating measures used in sales of gas, is found to be correct within the meaning of the said Act.

Appendix.

XIV. The undertakers shall supply to any owner or occupier of premises within the limits of the special Act requiring the same a meter for registering gas supplied by them : Provided always, that such owner or occupier shall, if required previous to receiving such meter, give to the undertakers security for payment to them of the price of such meter if he desires to purchase the same, or of the rent of such meter if he desires to hire the same.

Undertakers to supply meters.

XV. No consumer shall connect any meter with any pipe through which gas is supplied by the undertakers to such meter, or disconnect any meter from any such pipe, unless he shall have given to the undertakers not less than twenty-four hours' notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.(d)

Meters not to be connected or disconnected without notice.

XVI. Where any owner or occupier is required by the special Act to give security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined, on the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

Nature and amount of security.

XVII. Every consumer of gas supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him whereby any gas of the undertakers is registered in proper order for correctly registering such gas, and in default of his so doing the undertakers may cease to supply gas through such meter. The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense of the undertakers if the meter be found in proper order, but otherwise at the expense of the consumer.

Consumer to keep his meter in proper order.

XVIII. The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas,(e) and such meters and fittings shall not be subject to distress, or to the landlord's remedy for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the persons in whose possession the same may be.

Power to the undertakers to let meters.

XIX. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer in proper order for correctly registering gas, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times.

Undertakers to keep meter let for hire in repair.

(d) As to the recovery of this penalty, see section 44, *post*, p. 980. The giving of notice under this section does not affect the liability of a person to be convicted of an offence against section 18 of the Act of 1847 (10 & 11 Vict. c. 15) for substituting a larger pipe to increase the supply of gas. *Morrison Wood and Company v. West Ham Gas Company*, 52 L. T. (N.S.) 817 ; 33 W. R. 799 ; 49 J. P. 662. Where a gas company cut off the supply of gas, and the owner of the meter proceeded to remove it, it was held that he was not a consumer within this section, and damages were awarded for injuries caused by an explosion consequent on the disconnected pipe, which was still charged from the main, being broken in the removal of the meter. *Paterson v. Blackburn (Mayor, &c., of)*, 9 T. L. R. 55.

(e) See section 23, *post* ; see also sections 39, 41.

Appendix.

Register of gas meters to be *prima facie* evidence.

XX. The register of the meter shall be *prima facie* evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered by the undertakers : Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

Power to enter buildings for ascertaining quantities of gas consumed.

XXI. Any officer appointed by the undertakers may at all reasonable times enter any building or land lighted with gas supplied by the undertakers, in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied ; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

Power to remove meter and fittings.

XXII. In all cases in which a consumer of gas supplied by the undertakers ceases to require a supply of such gas, and in all cases in which the undertakers are authorised to take away and cut off the supply of gas from any premises, it shall be lawful for the undertakers, their agents or workmen, after twenty-four hours' notice in writing, under the hand of the secretary or other properly authorised officer of the undertakers, to the occupier, or if unoccupied, then to the owner or lessee, or to the agent of the owner or lessee, of any premises in which any pipes, meters, fittings, or apparatus belonging to the undertakers are laid or fixed, and through or in which the supply of gas is from any such cause discontinued, to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such pipes, meters, fittings, or apparatus, repairing all damage caused by such entry or removal.

Recovery of charges for gas.

XXIII. In case any person who shall have been supplied with gas by the undertakers shall neglect or refuse to pay the amount due in respect of such supply, any justice may issue his summons to such person, requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid ; and if on the appearance of such person, or in default of appearance after proof of the service of the summons, either personally or at the last known place of abode or of business of such person, no sufficient cause can be shown to the contrary, any justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such justice shall seem just and reasonable.(a)

Supply of Gas to Local Authorities.

supply and price of gas to public lamps.

XXIV. The undertakers shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case and the prices charged to private consumers in the district.(b)

As to consumption of gas supplied to the public lamps.

XXV. The gas supplied to the public lamps within the limits of the special Act shall be consumed by meter, at the option either of the local authority of the district

(a) It seems to be doubtful whether the sum due will now be recoverable as a civil debt under the Summary Jurisdiction Act, 1879, ss. 6, 35, and 47. See 52 J. P. 316. As to the effect of liquidation or bankruptcy on the right to distrain, see *Ex parte Hill, in re Roberts*, 6 Ch. D. 63 ; 46 L. J. Bk. 116 ; 37 L. T. (N.S.) 46 ; 25 W. R. 784.

(b) The company are entitled to the full price for gas supplied to public lamps though by reason of exceptional frosts they have been unable to afford the full supply. *In re Richmond Gas Company and The Mayor, &c., of Richmond* [1893], 1 Q. B. 56 ; 62 L. J. Q. B. 172 ; 67 L. T. 554 ; 41 W. R. 41 ; 56 J. P. 776 ; 5 R. 29 ; 9 T. L. R. 5.

or the undertakers, and in case of its being consumed by meter the meter shall be provided and fixed by the undertakers, and be paid for by the party requiring it. Appendix.

If the gas is supplied to the public lamps in any district by average meter indication, the undertakers shall, for securing uniformity of consumption between metered and unmetered lamps, from time to time provide the public lamps in such district with proper self-acting pressure regulators and burners to the satisfaction of the local authority of such district; and the average amount of the indications of all the meters attached to the public lamps within such district under the control of the local authority shall, except as hereinafter mentioned, be deemed to be the amount consumed by each such lamp in such district.

XXVI. In case gas is supplied to the public lamps in any district by the undertakers, they or the local authority of such district may, at their own expense, cause to be affixed to each lamp the instrument known as a street lamp governor, and the undertakers or such local authority (as the case requires) shall be entitled to have access thereto for the purpose of examining the same. Governors for street lamps.

XXVII. Any difference which may arise between the undertakers and any local authority in relation to the supply or consumption of gas to or by such local authority shall be from time to time settled by arbitration in manner provided by "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration. For settlement of differences between the undertakers and the local authority.

Testing of Gas.

XXVIII. The undertakers shall cause to be provided, at the place prescribed and within the prescribed time, a testing place, with apparatus therein, for the purposes following, or such of them as may be prescribed by the special Act; (that is to say,) Testing place.

1. For testing the illuminating power of the gas supplied :
2. For testing the presence of sulphuretted hydrogen in the gas supplied.

The said apparatus shall be in accordance with the regulations prescribed in Part I. of the Schedule A. to this Act annexed, or according to such rules as may from time to time be substituted in lieu thereof by any special Act, and shall be so situated and arranged as to be used for the purpose of testing the illuminating power and purity of the gas supplied by the undertakers, and the undertakers shall at all times thereafter keep and maintain such testing place and apparatus in good repair and working order.

XXIX. The local authority of any district within the limits of the special Act, where the gas is not supplied by such local authority, may after the passing of the special Act from time to time appoint, or may appoint and keep appointed, a competent and impartial person to be a gas examiner to test the gas at the testing place provided in conformity with the provisions of this Act; and such gas examiner may there test the illuminating power and purity of the gas supplied by the undertakers, on any or every day between the hours of five o'clock and ten o'clock in the afternoon from the first day of October to the thirty-first day of March, both inclusive, and on any or every day between the hours of eight o'clock and eleven o'clock in the afternoon from the first day of April to the thirtieth day of September, both inclusive. Appointment and powers of gas examiners.

XXX. Where no such gas examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of consumers of the gas of the undertakers, not being less than five, by order in writing may appoint some competent and impartial person to be gas examiner, and such person may at any time within the hours aforesaid, on producing the said order, enter on the premises of the undertakers, and there test the illuminating power and purity of the gas supplied by them. Two justices may appoint gas examiners.

XXXI. The undertakers may, if they think fit, on each occasion of the testing of the gas by the gas examiner, be represented by some officer, but such officer shall not interfere in the testing. Representation of undertakers.

XXXII. Any tests taken in pursuance of this Act shall be taken in accordance with the rules prescribed in Part II. of the Schedule A. to this Act annexed. Mode of testing.

Appendix.

Report of gas
examiner.

XXXIII. The gas examiner shall, on the day immediately following that on which the testing of the illuminating power or purity of the gas has been conducted, make and deliver a report of the results of his testing to the local authority or justices by whom he was appointed, and to the undertakers, and such report shall be receivable in evidence.

Access to
testing place.

XXXIV. The undertakers shall give to the gas examiner and to his assistants, and to every local authority within the limits of the special Act, and their agents, access to the testing place, and shall afford all facilities for the proper execution of this Act; and in case the undertakers make default in complying with any of the provisions of this section they shall for every such default be liable to a penalty not exceeding five pounds to the local authority or to the persons making the application.

Accounts.

Accounts, &c.

XXXV. The undertakers shall fill up and forward to the local authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual statement of accounts, made up to the thirty-first day of December then next preceding, as near as may be in the form and containing the particulars specified in the Schedule B. to this Act annexed.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

The Board of Trade, with the consent of the undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the undertaking, or of better carrying into effect the objects of this section.

In case the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.(a)

Penalties.

Penalty for
failure to
supply gas.

XXXVI. Whenever the undertakers neglect or refuse to give a supply of gas to any owner or occupier of premises within the limits of the special Act entitled to the same, under such pressure as is prescribed, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.(b)

Whenever the undertakers neglect or refuse to supply gas as by this Act required to all or any of the public lamps in accordance with the provisions of this Act, they shall be liable to a penalty not exceeding forty shillings for each default.(c)

If it shall be proved to the satisfaction of any two justices, not being shareholders in the undertaking, after hearing the parties, that on any day the gas supplied by the undertakers is under less pressure, of less illuminating power, or of less purity than it ought to be according to the provisions of this or the special Act, the undertakers shall in every such case forfeit and pay to the local authority or other persons making application for testing the gas such sum not exceeding twenty pounds as the justices shall determine.

(a) See *Dudley Gaslight Company v. Warmington*, ante, p. 973. Observe that an annual account must also be sent to the clerk of the peace under 10 & 11 Vict. c. 15, s. 38, ante, p. 869. A local Act which incorporated the Gasworks Clauses Act, 1847, except so far as it might be varied by the special Act, prescribed by section 32 a special form in accordance with which the annual accounts of the company were to be made up, in lieu of the provisions contained in section 38 of the Act of 1847. By section 49 of the Act of 1847 undertakers are not to be exempted from any general Act relating to gasworks which may be passed in any future session. The appellants made out their annual statement of accounts in the form prescribed by section 32 of their special Act, and did not furnish to the respondent, on application, a copy of an annual statement in the form prescribed by the text. It was held, distinguishing *Dudley Gaslight Company v. Warmington*, ante, p. 973, that as the appellants' special Act prescribed the form in which the annual statement of accounts was to be made up, the provisions in the text relating to the form of accounts did not apply. *Leamington Priors Gas Company v. Davis*, 18 Q. B. D. 107; 56 L. J. M. C. 14; 55 L. T. (N.S.) 734; 35 W. R. 123; 51 J. P. 360.

(b) A company who improperly cut off a supply of gas are liable under this section. *Commercial Gas Company v. Scott*, L. R. 10 Q. B. 400; 44 L. J. M. C. 171; 32 L. T. (N.S.) 765; 23 W. R. 874; 40 J. P. 214.

(c) As to the liability of the company when the supply to public lamps has been prevented by exceptional frosts, see *In re Richmond Gas Company and Richmond (Mayor, &c., of)*, ante, p. 976.

Penalties imposed on the undertakers for one and the same offence by several Acts of Parliament shall not be cumulative, and for such purpose the special Act and the Acts incorporated therewith shall be deemed several Acts.

Appendix.

Penalties not cumulative.

XXXVII. Where the gas examiner is appointed by the justices as aforesaid, the costs of and attending such experiment, including the remuneration to be paid to the person making the same, and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the undertakers, shall be paid, together with such penalty, by the undertakers, but in the event of no penalty being imposed the costs shall be in the discretion of the justices.

Cost of experiment to be paid according to event.

XXXVIII. Every person who wilfully, fraudulently, or by culpable negligence injures, or suffers to be injured any pipes, meter, or fittings belonging to the undertakers, or alters the index to any meter, or prevents any meter from duly registering the quantity of gas supplied, or fraudulently abstracts, consumes, or uses gas of the undertakers, shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding five pounds, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipes, meter, or fittings belonging to the undertakers, or altered the index to any meter, or prevented any meter from duly registering the quantity of gas supplied, the undertakers may also, until the matter complained of has been remedied but no longer, discontinue the supply of gas to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using gas of undertakers, when such meter is under the custody or control of the consumer, shall be *prima facie* evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter.

Penalty for injuring meters.

Recovery of Gas Rents.

XXXIX. In case any consumer of gas supplied by the undertakers leaves the premises where such gas has been supplied to him without paying the gas rent or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears.(d)

Incoming tenants not liable to pay arrears of gas rents, &c.

XL. If any person supplied with gas or with any gas meter or fittings by the undertakers neglects to pay to the undertakers the rent due for such gas or the rent(e) or money due to the undertakers for the hire or fixing of such meter, or any expenses lawfully incurred by the undertakers in cutting off the gas from the premises of such person, the undertakers may recover the sum so due in like manner as a penalty under this Act.

Recovery of rents, &c.

XLI. Whenever any person neglects to pay any rent or sum due and payable by him to the undertakers, the undertakers may recover the same, with full costs of suit, in any court of competent jurisdiction, and the remedy of the undertakers under this enactment shall be in addition to their other remedies for the recovery of such rent or sum.

Recovery of sums due to undertakers.

Legal Proceedings.

XLII. Any summons or warrant issued for any of the purposes of this Act may contain in the body thereof, or in a schedule thereto, several names and several sums.

Contents of summons or warrant.

XLIII. Any justice who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money.

Warrant of distress shall include costs.

(d) See *Gaslight and Coke Company v. Meade*, 45 L. J. M. C. 71; 33 L. T. (N.S.) 729; 40 J. P. 662; and *Ex parte Mason, In re Smith*, ante, p. 974.

(e) This is not a rent within the meaning of the Bankruptcy Act, 1869, s. 34. See *Ex parte Harrison, Re Peake*, 13 Q. B. D. 753; 53 L. J. Ch. 977; 51 L. T. (N.S.) 878.

Appendix.

Summary proceedings for offences, penalties, &c.

Service of notices by undertakers.

Liability to gas rent not to disqualify justices from acting.

XLIV. All offences and penalties under this Act, and all money forfeited, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by "The Gasworks Clauses Act, 1847," with respect to the recovery of penalties.(a)

XLV. Every notice which the undertakers are by this Act required to serve upon any person shall be served by being delivered to the person for whom it is intended, or by being left as his usual or last known place of abode, or sent by post addressed to such persons, or if such person or his address be not known to the undertakers, and cannot after due inquiry be found or ascertained, then by being affixed for three days to some conspicuous part of the premises to which such notice relates.

XLVI. No justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act.

SCHEDULE A.**PART I.***Regulations in respect of Testing Apparatus.*

1. *The apparatus for testing the illuminating power of the gas* shall consist of the improved form of Bunsen's photometer, known as Letheby's open 6C-inch photometer, or Evans' enclosed 100-inch photometer, together with a proper meter, minute clock, governor, pressure gauge, and balance.

The burner to be used for testing the gas shall be such as shall be prescribed.

The candles used for testing the gas shall be sperm candles of six to the pound, and two candles shall be used together.

2. *The apparatus—*

(a.) *For testing the presence in the gas of sulphuretted hydrogen.*—A glass vessel containing a strip of bibulous paper moistened with a solution of acetate of lead, containing sixty grains of crystallized acetate of lead dissolved in one fluid ounce of water.

PART II.*Rules as to mode of Testing Gas.*

1. *Mode of Testing for Illuminating Power.*

The gas in the photometer is to be lighted at least fifteen minutes before the testings begin, and it is to be kept continuously burning from the beginning to the end of the tests.

Each testing shall include ten observations of the photometer made at intervals of a minute.

The consumption of the gas is to be carefully adjusted to five cubic feet per hour.

The candles are to be lighted at least ten minutes before beginning each testing, so as to arrive at their normal rate of burning, which is shown when the wick is slightly bent and the tip glowing. The standard rate of consumption for the candles shall be 120 grains each per hour. Before and after making each set of ten observations of the photometer, the gas examiner shall weigh the candles, and if the combustion shall have been more or less per candle than 120 grains per hour he shall make and record the calculations requisite to neutralise the effects of this difference.

The average of each set of ten observations is to be taken as representing the illuminating power of that testing.

II. *Mode of Testing.*

(a.) *For sulphuretted hydrogen.*—The gas shall be passed through the glass vessel containing the strip of bibulous paper moistened with the solution of acetate of lead for a period of three minutes, or such longer period as may be prescribed; and if any discolouration of the test paper is found to have taken place, this is to be held conclusive as to the presence of sulphuretted hydrogen in the gas.

(a) See 10 & 11 Vict. c. 15, s. 40. *ante*, p. 870, incorporating 8 & 9 Vict. c. 20, ss. 140 *et seq.*, *ante*, p. 843.

SCHEDULE B.

Form of Annual Accounts.
The Gas Company.

Year ending 31st December, 18 .

A.—STATEMENT OF SHARE CAPITAL on the 31st December, 18 .

1. Description of capital.	2. Maximum Dividend authorised.	3. Number of Shares issued.	4. Nominal Amount of Share.	5. Called up per Share.	6. Total paid up.	7. Amount issued, but not paid up.	8. Remaining to be issued.	9. Total amounts authorised.

B.—STATEMENT OF LOAN CAPITAL on the 31st December, 18 .

1. Description of Loan (Mortgage, Bond, Debiture, Stock, &c.)	2. Rate per Cent. of Interest.	3. Total Amounts borrowed at 31st December, 18 .	4. Remaining to be borrowed.	5. Total Amounts authorised.

Total share capital paid up (see A.) - - - £
Do. loan do. borrowed (see B.) - - - £

Total capital received - - - £

Appendix.

C.—CAPITAL ACCOUNT for the year ended 31st December, 18 :

Expenditure to 31st December, 18 .	Expended this year.	Total to 31st December, 18	—	Certified Receipts, 31st December, 18 .	Received during year.	Total Receipts to 31st December, 18 .
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1. To expenditure to 31st December, 18 .						
<i>Since that date.</i>						
2. To lands acquired, including law charges				1. By ordinary shares of £ each -		
3. " new buildings, manufacturing plant, machines, storage works, and other structures connected with manufacture -				2. " ditto of £ each - - -		
4. " new mains and service pipes (not being in place of old ones), including laying same, paving, and other works connected with distribution				3. " preference shares of £ each -		
5. " new meters (not in place of old ones), including fixing -				4. " debenture stock - - -		
6. " costs of promoting special Act -				5. " mortgages and bonds - - -		
7. " special items (if any) -				6. " amount received in anticipation of calls		
Total expenditure	- - -					
To balance of capital account	- - -					
						Total - - -

Appendix.

D.—REVENUE ACCOUNT for the year ended 31st December, 18

		£	s.	d.	£	s.	d.	£	s.	d.
TO MANUFACTURE OF GAS.										
1.	Coals, including dues, carriage, unloading, and all expenses of depositing same on works	-	-	-						
2.	Purifying materials, oil, water, and sundries at works	-	-	-						
3.	Salaries of engineers, including chief engineer (if any), superintendents, and officers at works	-	-	-						
4.	Wages and gratuities at works	-	-	-						
5.	Repairs and maintenance of works and plant (including renewal of retorts), machines, apparatus, tools, materials, and labour	-	-	-						
	Less old material sold	-	-	-						
TO DISTRIBUTION OF GAS.										
6.	Salaries of surveyor, chief inspector, inspectors, assistant inspectors, and clerks in light office	-	-	-						
7.	Repair, maintenance, and renewal of mains, and of service pipes, including materials, laying, and paving, and labour	-	-	-						
8.	Repairing, renewing, and refixing meters	-	-	-						
TO PUBLIC LAMPS.										
9.	Lighting and repairing	-	-	-						
TO RENTS, RATES, AND TAXES.										
10.	Rents	-	-	-						
11.	Rates and taxes	-	-	-						
TO MANAGEMENT.										
12.	Directors' allowances	-	-	-						
13.	Salaries of secretary, accountant, and clerks, office keepers, and messengers	-	-	-						
14.	Collectors' commission or salaries	-	-	-						
15.	Stationery and printing	-	-	-						
16.	General establishment charges and incidentals	-	-	-						
17.	Auditor	-	-	-						
TO LAW AND PARLIAMENTARY CHARGES.										
18.	Law	-	-	-						
19.	Parliamentary (oppositions)	-	-	-						
20.	To depreciation fund for works on leasehold lands (if any)	-	-	-						
21.	To bad debts	-	-	-						
	To other items (if any)	-	-	-						
	Total expenditure	-	-	-						
	Balance carried to Profit and Loss Account	-	-	-						
					Total receipts		-	-	-	
							-	-	-	

Total receipts

Appendix.

E.—PROFIT AND LOSS ACCOUNT (NET REVENUE) for the year ended 31st December, 18 . . .

	£	s.	d.
1. To amount carried to Reserved Fund Account, F. (if any), from profits of 18	-	-	-
2. " Interest on temporary loans, and moneys received in anticipation of calls	-	-	-
3. " Ditto on mortgages and bonds accrued to 31st December, 18	-	-	-
4. " Ditto on debenture stock to ditto	-	-	-
5. " Half-year's dividend on 1st preferential to 30th June, 18	-	-	-
6. " Ditto, 2nd preferential to ditto	-	-	-
7. " Ditto on ordinary shares at per cent.	-	-	-
" Balance of net profit to be carried to next account subject to half-year's dividends to 31st Dec., 18	-	-	-
	£		

F.—RESERVED FUND ACCOUNT for the year ended 31st December, 18 . . .

	£	s.	d.
1. Amount (if any) carried to Profit and Loss Account (E.) to make up deficiencies of dividends to 31st December, 18	-	-	-
2. Amount paid for extraordinary claim or demand (if any)	-	-	-
3. Amount of balance to be carried to next account	-	-	-
	£		

Like accounts must be given for depreciation fund for works on leaseholds, if any.

G.—STATEMENT OF COALS,
During the year ended 31st December, 18 .

Description of Coal.	In Store, 31st December, 18 .	Received during Year.	Carbonised or used during Year.	In Store, 31st December, 18 .
	Tons.	Tons.	Tons.	Tons.
Common - - - - -	-			
Cannel - - - - -	-			

H.—STATEMENT OF RESIDUAL PRODUCTS,

For the year ended 31st December, 18 .

Description of Residual.	In Store, 31st December, 18 . Estimated.	Made during Year. Estimated.	Used in Manufacture during Year. Estimated.	Sold during Year.	In Store, 31st December, 18 . Estimated.
Coke—common, chaldrons of 36 bushels -					
" cannel "					
Breeze "					
Tar, gallons - - - - -					
Ammoniacal liquor, butts of 108 gallons -					

Appendix.

Appendix.

THE LOCAL GOVERNMENT BOARD ACT, 1871.

(34 & 35 VICT. CAP. 70.)(a)

An Act for constituting a Local Government Board, and vesting therein certain functions of the Secretary of State and Privy Council concerning the Public Health and Local Government, together with the powers and duties of the Poor Law Board.

[14th August, 1871.]

* * * * *

Preliminary.

I. This Act may be cited as "The Local Government Board Act, 1871."

Short title.

Establishment of Local Government Board.

II. A board shall be established, to be called the Local Government Board . . . and all powers and duties vested in or imposed on the Poor Law Board by the several Acts of Parliament relating to the relief of the poor and any other Acts, or vested in or imposed on one of Her Majesty's principal Secretaries of State by the enactments in that behalf mentioned in the first part of the schedule annexed hereto, so far as such powers and duties relate to England.(b) or vested in or imposed on Her Majesty's Most Honourable Privy Council by the enactments in that behalf specified in the second part of the said schedule, shall be transferred to and imposed on the said Local Government Board, and except as otherwise provided by this Act, shall be exercised and performed by such Board in like manner and form, and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before the passing of this Act have been exercised and performed by the authorities in whom the same were then vested respectively, or as near thereto as circumstances admit.

Establishment of Local Government Board.

III. The Local Government Board shall consist of a president to be appointed by Her Majesty, and to hold office during the pleasure of Her Majesty, and of the following *ex officio* members, that is to say, the Lord President of Her Majesty's Most Honourable Privy Council, all Her Majesty's principal Secretaries of State for the time being, the Lord Privy Seal, and the Chancellor of the Exchequer.

Constitution of Local Government Board.

* * * * *

The Local Government Board may appoint in writing such secretaries, assistant secretaries, inspectors, auditors, clerks, messengers, and other officers as the Board may, with the sanction of the Treasury, determine.

No payment shall be made in respect of their duties under this Act to the *ex officio* members of the Local Government Board, but there shall be paid out of moneys provided by Parliament to the president, secretaries, and other officers of the Board such salaries as the Treasury may from time to time determine : Provided, that the appointment of any officer to a new office made by the Local Government Board in pursuance of this section shall be deemed to be temporary only until the salary of such office(c) has been provided for by Parliament.

IV. The president and one of the secretaries of the Local Government Board shall at the same time be capable of being elected to and of voting in the Commons House

President and one of the

(a) See 21 & 22 Vict. c. 97, *ante*, p. 927. This Act is here printed as left after the various repeals effected therein by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

(b) See the additional powers transferred to the Board by 35 & 36 Vict. c. 79, ss. 34—36, and preserved by 38 & 39 Vict. c. 55, Sched. V., Part III., *ante*, p. 455.

(c) *Sic*.

Appendix.

secretaries may sit in Parliament.

Seal, style, and acts of Board.

of Parliament, and the office of president shall be deemed to be an office included in Schedule H. of the Representation of the People Act, 1867 ; in Schedule H. of the Representation of the People (Scotland) Act, 1868 ; and in Schedule E. of the Representation of the People (Ireland) Act, 1868.

V. The Local Government Board may adopt an official seal, and describe themselves generally by the style and title of "The Local Government Board," and, save as hereinafter provided, any act to be done or instrument to be executed by or on behalf of the Local Government Board may be done or executed in the name of that Board by the president or by any member of the Local Government Board, or by a secretary or assistant secretary, if such secretary or assistant secretary is authorized to do or execute the same by any general order of the Local Government Board.

A rule, order, or regulation made by the Local Government Board shall be valid if it is made under the seal of the Board, and signed by the president or one of the *ex officio* members of the Board, and countersigned by a secretary or assistant secretary ; and the production of such *prima facie* evidence of any of the said rules, orders, or regulations as is required by the Documentary Evidence Act, 1868,(a) with respect to the rules, orders, or regulations of the Poor Law Board, shall, until the contrary is shown, be a sufficient proof that any such rule, order, or regulation of the Local Government Board was duly made.(b)

Transfer of officers.

VI. . . . The Local Government Board may, by order, distribute the business to be performed under the Local Government Board amongst the several officers and persons transferred to the Board by this Act in such manner as the Local Government Board may think expedient.(c)

Construction of Acts and documents, and power of Local Government Board.

VII. In the construction of and for the purposes of any Act of Parliament, contract, or other document passed, entered into, or made before the establishment of the Local Government Board, but so far only as may be necessary for exercising the powers and discharging the duties by this Act transferred to and imposed on the Local Government Board, the name of such Board shall, according to circumstances, be deemed to be substituted for the Poor Law Board, one of Her Majesty's principal Secretaries of State,(d) or Her Majesty's Most Honourable Privy Council, as the case may require ; and any act or thing which might, if this Act had not passed, have been done by the Poor Law Board, or by one of Her Majesty's principal Secretaries of State, or by Her Majesty's Most Honourable Privy Council, so far as relates to the powers and duties hereby transferred, may be done by the Local Government Board.

Duplicate returns to be sent to Local Government Board.

VIII. Where under an Act, whether passed before or after the passing of this Act, any return relative to any rate, toll, tax, or due raised in England (other than such as is raised for the public revenue of the United Kingdom) is required to be sent to one of Her Majesty's Secretaries of State or any other department of the Government, a duplicate of such return shall in like manner be sent to the Local Government Board, and any person failing to send the same shall be subject to the like penalties as a person neglecting to send any return under the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter fifty-one.(e)

(a) 31 & 32 Vict. c. 37 ; and see also the Documentary Evidence Act, 1882 (45 Vict. c. 9).

(b) See as to publication of their orders, 35 & 36 Vict. c. 79, s. 48, re-enacted in the Public Health Act, 1875, Sched. V., Part III., *ante*, p. 456.

(c) See also the re-enacted provisions of 35 & 36 Vict. c. 79, s. 37, *ante*, p. 455.

(d) See further 35 & 36 Vict. c. 79, s. 34, re-enacted, *ante*, p. 454, whereby the consent of the Local Government Board is substituted for that of other departments in the cases there stated.

(e) See the Local Taxation Returns Acts (23 & 24 Vict. c. 51, *ante*, p. 929, and 40 & 41 Vict. c. 66, *post*) ; also the District Auditors Act, 1879 (42 & 43 Vict. c. 6), s. 3, *post*.

Appendix.

SCHEDULE referred to in the foregoing Act.(f)

PART I.

Powers and Duties of Secretary of State.

Subject.	Act.
Registration of Births, Deaths, and Marriages	6 & 7 Will. 4, c. 86. 7 Will. 4 & 1 Vict. c. 22.
Baths and Washhouses	9 & 10 Vict. c. 74. 10 & 11 Vict. c. 34.
Public Improvements	23 & 24 Vict. c. 30.
Towns Improvement	10 & 11 Vict. c. 34.
Returns. Local Taxation	23 & 24 Vict. c. 51. And any Acts amending the said Acts, and conferring powers on the said Secretary of State.

PART II.

Powers and Duties of Privy Council.

Subject.	Act.
Vaccination	30 & 31 Vict. c. 84. And any Acts amending the said Acts, and conferring powers on the said Privy Council.

THE PETROLEUM ACT, 1871.

(34 & 35 VICT. CAP. 105.)(g)

An Act for the safe keeping of Petroleum and other substances of a like nature.
[21st August, 1871.]

* * * * *

I. This Act may be cited as "The Petroleum Act, 1871."

II. In this Act, if not inconsistent with the context, the following terms have the short title.
meanings hereinafter assigned to them ; (that is to say,)

The term "borough" means—

In England any place for the time being subject to the provisions of the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same.(h)

Interpretation
of certain terms
in the Act.

"Borough;"

* * * * *

(f) Several of the Acts originally contained in this schedule are consolidated in the Public Health Act, 1875, and have been entirely repealed and are, therefore, here omitted ; the others are printed in this Appendix in so far as they concern local authorities.

(g) See the amending Acts : 42 & 43 Vict. c. 47, and 44 & 45 Vict. c. 67, *post*. The preamble of this Act, the clause of enactment, and certain definitions in section 2, were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54), and the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(h) Now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) ; see section 242 of that Act.

Appendix.

The term "person" includes a body corporate :						
"Person :"	*	*	*	*	*	*
"Harbour :"	The term "harbour" means any harbour properly so-called, whether natural or artificial, and any port, haven, estuary, tidal river or other river, canal or inland navigation navigated by sea-going ships, and any dock, pier, jetty, or other works in or at which ships do or can ship or unship goods or passengers :					
"Harbour authority :"	The term "harbour authority" includes any persons or person being or claiming to be proprietors or proprietor of or entrusted with the duty or invested with the power of improving, maintaining, or managing any harbour :					
"Ship :"	The term "ship" includes every description of vessel used in navigation, whether propelled by oars or otherwise :					

* * * * *

"Court of Summary Jurisdiction :"	The term "court of summary jurisdiction" means and includes any justice or justices of the peace metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts there referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable.(a)					
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Definition of "Petroleum" and application of Act.	III. For the purposes of this Act the term "petroleum" includes any rock oil, Rangoon oil, Burnmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum, or any of the above-mentioned oils.(b)					
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Bye-laws as to ship carrying petroleum.	IV. Every harbour authority shall frame and submit for confirmation to the Board of Trade bye-laws for regulating the place or places at which ships carrying petroleum to which this Act applies are to be moored in the harbour over which such authority has jurisdiction, and are to land their cargo, and for regulating the time and mode of, and the precautions to be taken on, such landing. The harbour authority shall publish the bye-laws so framed with a notice of the intention of such authority to apply for the confirmation thereof. The Board of Trade may confirm such bye-laws with or without any omission, addition, or alteration, or may disallow the same.					
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Every such bye-law when confirmed shall be published by the harbour authority, and may be from time to time altered or repealed by a bye-law made in like manner. Bye-laws under this section shall be published in such manner as the Board of Trade may from time to time direct.

If at any time it appears to the Board of Trade that there is no bye-law for the time being in force under this section in any harbour the Board of Trade may, by notice, require the harbour authority of such harbour to frame and submit to them a bye-law for the purposes of this section, and if such harbour authority make default in framing a bye-law and obtaining the confirmation thereof within the time limited by such notice the Board of Trade may make a bye-law for the purposes of this section, and such bye-law shall have the same effect as if it had been framed by the harbour authority and confirmed by the Board of Trade.

Where any ship or cargo is moored, landed, or otherwise dealt with in contravention of any bye-law for the time being in force under this Act in any harbour, the owner and master of such ship, or the owner of such cargo, as the case may be, shall each incur a penalty not exceeding fifty pounds for each day during which such contravention continues, and it shall be lawful for the harbour master or any other person acting under the orders of the harbour authority of such harbour to cause such ship or cargo to be removed, at the expense of the owner thereof, to such place as may be in conformity with the said bye-law, and all expenses incurred in such removal may be recovered in the same manner in which penalties are by this Act made recoverable.

Notice by owner or master of ship carrying petroleum.	V. The owner or master of every ship carrying a cargo any part of which consists of petroleum to which this Act applies, on entering any harbour within the United					
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(a) These definitions are substantially the same as those in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, by which they are superseded, though not expressly repealed.

(b) The remainder of this section is repealed by 42 & 43 Vict. c. 47, s. 6, *post*, and section 2 of that Act supplies a definition of "petroleum to which this Act (*i.e.*, the Act of 1871) applies." And see *Jones v. Cook*, L. R. 6 Q. B. 505; 40 L. J. M. C. 179; 24 L. T. (N.S.) 806; 19 W. R. 771.

Kingdom, shall give notice of the nature of such cargo to the harbour authority **Appendix.**
having jurisdiction over such harbour.

If such notice be not given the owner and master of such ship shall each incur a penalty not exceeding the sum of five hundred pounds, unless it is shown to the satisfaction of the court before which the case is tried that neither the owner nor the master knew the nature of the goods to which the proceedings relate, nor could with reasonable diligence have obtained such knowledge.

VI. Where any petroleum to which this Act applies—

- (a.) Is kept at any place except during the seven days next after it has been imported ; or
- (b.) Is sent or conveyed by land or water between any two places in the United Kingdom ; or
- (c.) Is sold or exposed for sale ;

Label on vessels
containing
petroleum.

the vessel containing such petroleum shall have attached thereto a label in conspicuous characters, stating the description of the petroleum, with the addition of the words "highly inflammable," and with the addition—

- (a.) In the case of a vessel kept, of the name and address of the consignee or owner ;
- (b.) In the case of a vessel sent or conveyed, of the name and address of the sender ;
- (c.) In the case of a vessel sold or exposed for sale, of the name and address of the vendor.

All petroleum to which this Act applies which is kept, sent, conveyed, sold, or exposed for sale, in contravention of this section, shall, together with the vessel containing the same, be forfeited, and in addition thereto the person keeping, sending, selling, or exposing for sale the same shall for each offence be liable to a penalty not exceeding five pounds.

VII. Save as hereinafter mentioned, after the passing of this Act petroleum to which this Act applies shall not be kept, (c) except in pursuance of a license given by such local authority as in this Act mentioned. **Regulations as to storage of petroleum.**

All petroleum kept in contravention of this section shall, together with the vessel containing the same, be forfeited, and in addition thereto the occupier of the place in which such petroleum is so kept shall be liable to a penalty not exceeding twenty pounds a day for each day during which such petroleum is so kept.

This section shall not apply to any petroleum kept either for private use or for sale, provided the following conditions are complied with :

- (1.) That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped ;
- (2.) That the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

VIII. The following bodies shall respectively be the local authority to grant licenses under this Act in the districts hereinafter mentioned ; (that is to say.) **Definition of local authority.**

- (1.) In the city of London, except as hereinafter in this section mentioned, the court of the Lord Mayor and aldermen of the said city ;
- (2.) In the Metropolis (that is, in places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Management Act, 1855), except the city of London, and except as hereafter in this section mentioned, the Metropolitan Board of Works ; (d)
- (3.) In any borough in England except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council ;
- (4.) In any place in England except as hereafter in this section mentioned, within the jurisdiction of any trustees or improvement commissioners appointed under the provisions of any local or general Act of Parliament, and not being a borough or comprising any part of a borough, the trustees or commissioners ;
- (5.) In any place in England (except as hereafter in this section mentioned) within the jurisdiction of a local board constituted under the Local Government

(c) This was held to apply to keeping in a cart for the purpose of being hawked. *Coleman v. Goldsmith*, 43 J. P. 718. But see now 44 & 45 Vict. c. 67, *post*.

(d) The powers and duties of the Metropolitan Board of Works are now transferred to the London County Council by the Local Government Act, 1888 (51 & 52 Vict. c. 44), s. 40.

Appendix.

Act, 1858(a), and not being any of the districts before mentioned or comprising any part of any such district, the local board :

* * * * *

(8.) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority :

(9.) In any place in which there is no local authority as before in this section defined, in England the justices in petty sessions assembled (b)

Mode of granting licenses.

IX.(c) Licenses in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licenses, if any, granted by such authority are executed. Licenses may be granted for a limited time and may be subject to renewal or not in such manner as the local authority think necessary.

There may be annexed to any such license such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum to which this Act applies is to be stored, the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the district of the licensing authority, and generally as to the safe keeping of such petroleum as may seem expedient to the local authority.

Any licensee violating any of the conditions of his license shall be deemed to be an unlicensed person. There may be charged in respect of each license granted in pursuance of this Act such sum, not exceeding five shillings, as the local authority may think fit to charge.

In case of refusal of license the applicant may memorialize Secretary of State or Lord Lieutenant.

X. If on any application for a license under this Act the local authority refuse the license, or grant the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, deliver to him in writing under the hand or hands of one or more of the persons constituting the local authority, a certificate of the grounds on which they refused the license or annexed conditions to the grant thereof.

The applicant within ten days from the time of the delivery of the certificate may transmit the same to a Secretary of State if the application is for a license in England, together with a memorial, praying that notwithstanding such refusal the license may be granted, or that the conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial.

It shall be lawful for the Secretary of State, if he think fit, on consideration of such memorial and certificate, and, if he think it necessary or desirable, after due inquiry and a report by such person as he may appoint for that purpose, to grant the license prayed for, either absolutely or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority ; and the license so granted or altered and modified, as the case may be, when certified under the hand of a Secretary of State, shall be to all intents as valid as if granted by the local authority.(b)

Testing of petroleum by officer of local authority.

XI. Any officer authorised by the local authority may purchase any petroleum from any dealer in it, or may, on producing a copy of his appointment, purporting to be certified by the clerk or some member of the local authority, or producing some other sufficient authority, require the dealer to show him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and to give him samples of such petroleum on payment of the value of such samples.

When the officer has by either of the means aforesaid taken samples of petroleum, he may declare in writing to the dealer that he is about to test the same, or cause the

(a) Now the Public Health Act, 1875. See section 313 of that Act, *ante*, p. 387.

(b) Words relating to Scotland or Ireland only are omitted from this section. The powers, duties, and liabilities of justices out of session (*i.e.*, out of quarter sessions) in the execution of this Act as the local authority are now transferred to the district council by sections 27 and 32 of the Local Government Act, 1894, *ante*, pp. 727, 730.

(c) A license now gives a right to hawk petroleum. See 44 & 45 Vict. c. 67, s. 1, *post*. Any conditions inconsistent with that right are void : section 3.

same to be tested, in manner set forth in Schedule One to this Act, (d) and it shall be lawful for him to test the same or cause the same to be tested, at any convenient place at such reasonable time as he may appoint, and the dealer or any person appointed by him may be present at the testing, and if it appear to the officer or other person so testing that the petroleum from which such samples have been taken is petroleum to which this Act applies, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings that may be taken against a dealer in petroleum in pursuance of this Act; but it shall be lawful for a dealer proceeded against to give evidence in proof that such certificate is incorrect, and thereupon the court before which any such proceedings may be taken may, if such court think fit, appoint some person skilled in testing petroleum to examine the samples to which such certificate relates, and to declare whether such certificate is correct or incorrect. (e)

Appendix.

Any expenses incurred in testing any petroleum of such dealer in pursuance of this section shall, if such dealer be convicted of keeping, sending, conveying, selling, or exposing for sale, petroleum in contravention of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly. In any other event such expenses shall be paid by the local authority out of any funds for the time being in their hands, and in case the local authority are the justices, out of the county rate.

XII. Any dealer who refuses to show to any officer authorised by the local authority every or any place or all or any of the vessels in which petroleum in his possession is kept or to give him such assistance as he may require for examining the same, or to give to such officer samples of such petroleum on payment of the value of such samples, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall incur a penalty not exceeding twenty pounds.

Penalty for refusing information and obstructing officer.

XIII. Where any court of summary jurisdiction is satisfied by information on oath that there is reasonable ground to believe that any petroleum to which this Act applies is being kept, sent, conveyed, or exposed for sale within the jurisdiction of such court in contravention of this Act, at any place, whether a building or not, or in any ship or vehicle, such court shall grant a warrant by virtue whereof it shall be lawful for any person named in such warrant to enter the place, ship, or vehicle named in such warrant, and every part thereof, and examine the same and search for petroleum therein, and take samples of any petroleum found therein, and if any petroleum to which this Act applies be found therein, which is kept, sent, conveyed, or exposed for sale, in contravention of this Act, to seize and remove such petroleum, and the vessel containing the same, and to detain such petroleum and vessel until some court of summary jurisdiction has determined whether the same are or not forfeited, the proceedings for which forfeiture shall be commenced forthwith after the seizure. (f)

Search for petroleum. See 23 & 24 Vict. c. 139, s. 25.

Any person seizing any petroleum to which this Act applies in pursuance of this section shall not be liable to any suit for detaining the same, or for any loss or damage incurred in respect of such petroleum, otherwise than by any wilful act or neglect while the same is so detained.

If any petroleum to which this Act applies is seized in pursuance of this section in any ship or vehicle, the person seizing the same may use, for the purposes of the removal thereof, during twenty-four hours after the seizure, the said ship or vehicle with the tackle, beasts, and accoutrements belonging thereto, and if he do so shall pay to the owner thereof a reasonable recompense for the use thereof, and the amount of such recompense shall, in case of dispute, be settled by the court of summary jurisdiction before whom proceedings for the forfeiture are taken, and may be recovered in like manner as penalties under this Act may be recovered.

(d) This schedule was repealed by the Statute Law Revision Act, 1883. See now 42 & 43 Vict. c. 47, s. 2, *post*.

(e) It is a question of fact for the court to decide whether the statutory directions as to testing have been complied with. *Beck v. Stringer*, L. R. 6 Q. B. 497; 40 L. J. M. C. 174; 25 L. T. (N.S.) 122; 19 W. R. 1140; 35 J. P. 710.

(f) A constable or officer is empowered by 44 & 45 Vict. c. 67, s. 4, to seize and detain any petroleum when he has reason to believe that a contravention of that Act is being committed. The section referred to in the marginal note is now repealed by the Explosives Act, 1875 (38 & 39 Vict. c. 17), s. 122, and sched. IV., and general power of search given instead by sections 73 and 74 of that Act.

Appendix.

Any person who, by himself or by any one in his employ or acting by his direction or with his consent, refuses or fails to admit into any place occupied by or under the control of such person, any person demanding to enter in pursuance of this section, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, or taking any such samples as authorised by this section, shall be liable to pay a penalty not exceeding twenty pounds, and to forfeit all petroleum to which this Act applies which is found in his possession or under his control.

Application
of Act to other
substances.

XIV. Her Majesty may from time to time make, revoke, and vary orders in council directing this Act or any part thereof to apply to any substance, ^(a) and this Act, or the part thereof specified in the order shall, during the continuance of the order, apply to such substance, and shall be construed and have effect as if throughout it such substance had been included in the definition of petroleum to which this Act applies, subject to the following qualifications :

- (1.) The quantity of any substance to which this Act is directed by order in council to apply, which may be kept without a license, shall be such quantity only as is specified in that behalf in such order, or if no such quantity is specified no quantity may be kept without a license :
- (2.) The label on the vessel containing such substance shall be such as may be specified in that behalf in the order.

Summary
proceedings
for offences,
penalties, &c.

XV. ^(b) In England all offences and penalties under this Act, and all money and costs directed by this Act to be recovered as penalties, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

* * * * *

Provided as follows :—

1. A court of summary jurisdiction shall not impose a penalty exceeding fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

2.

3. The “court of summary jurisdiction,” when hearing and determining an information or complaint, shall be constituted in some one of the following manners : (that is to say,)

(a.) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned, sitting alone or with others at some court or other place appointed for the administration of justice ; that is to say, the Lord Mayor, or any alderman of the city of London, a metropolitan police magistrate, a stipendiary magistrate, or some other officer or officers for the time being empowered by law to do alone or with others any act authorised to be done by more than one justice of the peace :

* * * * *

6. No conviction or order made in pursuance of this Act shall be quashed for want of form or be removed by *certiorari* or otherwise, either at the instance of the Crown or of any private party, into any superior court. ^(c)

* * * * *

Reservation
of previous
powers with
respect to
inflammable
substances.

XVI. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local or harbour authority by Act of Parliament, law, or custom, and every local authority and harbour authority may exercise such other powers in the same manner as if this Act had not passed ; and nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance. ^(d)

XVII. ^(e)

^(a) This power has not been exercised.

^(b) Parts relating to Scotland and Ireland only are omitted from this section.

^(c) Sub-sections (4), (5), and (7), and sub-section (6), except as above printed, were repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), which substitutes for the repealed parts the corresponding provisions of the Summary Jurisdiction Acts.

^(d) See as to common law nuisances by storage of inflammable substances in crowded localities, *Reg. v. Lister*, Dears. & B. C. C. 209 ; 26 L. J. M. C. 196 ; 3 Jur. (N.S.) 570 ; *Hepburn v. Lordan*, 2 H. & M. 345 ; 34 L. J. Ch. 293 ; 11 Jur. (N.S.) 132.

^(e) This section repeals the previous Acts relating to petroleum, but is repealed, together with the schedule of repealed Acts, by the Statute Law Revision Act, 1883.

Appendix.

THE INFANT LIFE PROTECTION ACT, 1872.

(35 & 36 VICT. CAP. 38.)(c)

An Act for the better Protection of Infant Life.

[25th July, 1872.]

I.(f) *

The term "court of summary jurisdiction" means and includes any justice or justices of the peace metropolitan police magistrate, stipendiary or other magistrate or authority, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable :

Interpretation clause.

In this Act the words "local rate," "local jurisdiction," and "local authority," mean, in reference to the districts mentioned in the first column of the First Schedule annexed hereto, the rate, jurisdiction and authority mentioned in the second, third, and fourth columns of the said schedule, and such schedule and the notes thereto annexed shall be deemed to be part of this Act.

II.(g) It shall not be lawful for any person to retain or receive for hire or reward in that behalf more than one infant, and in case of twins more than two infants, under the age of one year for the purpose of nursing or maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been registered as herein provided.

Houses of persons retaining or receiving for hire two or more infants for the purpose of nursing to be registered.

III. The local authority shall cause a register to be kept in which shall be entered the name of every person applying to register any house for the purposes of this Act, and the situation of every such house, and the local authority shall from time to time make bye-laws for fixing the number of infants who may be received into each house so registered ; the registration shall remain in force for one year ; no fee shall be charged for registration. Every person who receives or retains any infant in contravention to the provisions of this Act shall be guilty of an offence against this Act.

Register of names and houses to be kept by local authority.

IV. The local authority may refuse to register any house, unless they are satisfied that such house is suitable for the purposes for which it is to be registered, and unless they are satisfied by the production of certificates that the person applying to be registered is of good character, and able to maintain such infants.

Local authority may refuse to register.

V. The person registered as aforesaid shall immediately enter in a register to be kept by him the name, sex, and age of each infant under his care, and the date at which and the names and addresses of the persons from whom they were received, and shall also enter in the said register the time when and the names and addresses of the person by whom every such infant received and retained as aforesaid shall be removed immediately after the removal of such infant, and shall produce the said register when required to do so by the local authority ; and in the event of his refusing so to produce the said register or neglecting to enter in a register the name, sex, and age of each of the said infants, and the date at which and the names and addresses of the persons from whom they were received and by whom they were removed respectively, shall be liable to a penalty not exceeding five pounds. The person registered shall be entitled to receive gratuitously from the local authority a book of forms for the registration of infants ; such register may be in the form contained in the Second Schedule to this Act.

Persons whose names and houses are registered to keep a register of infants and to produce it when lawfully required.

(c) See the Local Government Act, 1894, ss. 27 (1) (f) and 32, *ante*, pp. 727, 730. The preamble and clause of enactment to this Act are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

(f) The definition of "Summary Jurisdiction Acts" given by this section is repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54), as obsolete in view of the definition contained in section 13 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63). Words relating to Scotland only are omitted from the following definition.

(g) The opening words of this section are repealed by the Statute Law Revision Act, 1893 (No. 2) (56 & 57 Vict. c. 54).

Appendix.

Forgery of certificate and falsifying register.

VI. If any person shall make false representations with a view to being registered under this Act, or shall forge any certificate for the purpose of this Act, or make use of any forged certificate, knowing it to be forged, or shall falsify any register kept in pursuance of this Act, he shall be guilty of an offence against this Act.

Local authority may strike name and house off register for neglect, &c.

VII. If it shall be proved to the satisfaction of the local authority that any person whose house has been so registered as aforesaid has been guilty of serious neglect, or is incapable of providing the infants intrusted to his care with proper food and attention, or that the house specified in the register has become unfit for the reception of infants, it shall be lawful for the local authority to strike his name and house off the register.

Inquest to be held on death of infant.

VIII. The person registered as aforesaid shall within twenty-four hours after the death of every infant so retained or received cause notice thereof to be given to the coroner for the district within which the said infant died, and the said coroner shall hold an inquest on the body of every such infant unless a certificate under the hand of a registered medical practitioner shall be produced to him by the person so registered certifying that such registered medical practitioner has personally attended or examined such infant, and specifying the cause of its death, and the said coroner shall be satisfied by such certificate that there is no ground for holding such inquest. If the person so registered shall neglect to give notice as aforesaid he shall be guilty of an offence under this Act.

Punishment for offence under this Act.

IX. Every person guilty of an offence under this Act shall be liable to imprisonment for not more than six months, with or without hard labour, or to a penalty not exceeding five pounds as a court of summary jurisdiction may award, and shall in addition be liable to have his name and house struck off the register.

Payment of expenses out of local rate.

X. All expenses incurred in and about the execution of this Act shall be defrayed out of the local rate.

Offence how to be prosecuted.

XI. Any offence under this Act may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts: Provided as follows: (a)

* * * * *

The court of summary jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter arising under this Act, shall be constituted either of two or more justices of the peace in petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Application of penalties recovered under the Act.

XII. Any moneys arising from fees or fines under this Act shall be paid to the account of the local rate, and be applied to the purposes to which that rate is applicable.

Exceptions from provisions of Act.

XIII. The provisions of this Act shall not extend to the relatives or guardians of any infant retained or received as aforesaid, nor to institutions established for the protection or care of infants, nor to any person receiving any infant for the purpose of nursing or maintaining such infant under the provisions of any Act for the relief of the poor. (b)

* * * * *

Short title.

XVI. This Act may be cited as "The Infant Life Protection Act, 1872."

(a) Part of this proviso is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, and Schedule. See now section 39 of the Summary Jurisdiction Act, 1879.

(b) Section 14 merely relates to the application of this Act to Scotland. Section 15, as to the commencement of this Act, is repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). Both sections are, therefore, here omitted.

Appendix.

THE FIRST SCHEDULE referred to in the foregoing Act.(c)

ENGLAND.

District.	Local Rate.	Local Jurisdiction.	Local Authority.
Counties, except the metropolis and city of London.	The county rate or rate in the nature of a county rate.	Petty sessional division.	Justices in petty sessions.(d)
The metropolis - -	Rate or fund applicable to the payment of the general expenses of the board.	Area of the metropolis.	The Metropolitan Board of Works.
City of London and the liberties thereof.	Consolidated sewers rate.	Area of the city of London and the liberties thereof.	Common council.
Boroughs - -	The borough fund or borough rate.	Area of borough -	Council.

"County" shall not include a county of a city or county of a town, but shall include any riding, division, parts, or liberty of a county having a separate commission of the peace.

Where a county or liberty of a county having a separate commission of the peace is not divided into petty sessional divisions, such county or liberty of a county shall itself for the purposes of this Act be deemed to be a petty sessional division of the county by which it is constituted or in which it is geographically situate.

"The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, exclusive of the city of London and the liberties thereof.

"Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act made to provide for the Regulation of Municipal Corporations in England and Wales," and having a separate court of quarter sessions.(e)

Every place that is not, according to the foregoing definitions, a borough, a county, or part of the metropolis, or city of London, or the liberties thereof, shall be deemed to form part of the county, as hereinbefore defined, to the county rate of which it is assessed, or, if not so assessed, of the county within which it is situate.

* * * * *

(c) The remainder of this schedule relates only to the application of this Act to Scotland and Ireland, and is, therefore, omitted.

(d) The jurisdiction of the justices as the local authority under this Act is now transferred to the district council by the Local Government Act, 1894, ss. 27 and 32, *ante*, pp. 727, 730.

(e) Now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); see section 242 of that Act.

THE SECOND SCHEDULE referred to in the foregoing Act.

Date at which received.	Name.	Sex.	Age.	Name and Address of Person from whom received.	Date at which removed.	Name and Address of Person by whom removed.

(35 & 36 VICT. CAP. 61.)

[6th August, 1872.]

I. The Act shall not apply to Scotland.

II. No person shall use or employ in any manufactory, or any other place, any steam whistle^(b) or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues : Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person using the same : Provided also, that it shall be lawful for the Local Government Board, on representation made to them by any person that he is prejudicially affected by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority.

III. "Sanitary authority" means the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866.(c)

IV. All offences and penalties under this Act may be prosecuted and recovered in England in manner directed by the Act of the session of the eleventh and twelfth years of Her present Majesty, chapter forty-three, and any Acts amending the same. . . .

(a) The clause of enactment to this Act was repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

(b) L. formerly used a whistle directly connected with an engine-boiler but disconnected it, and used thereafter a gas engine to compress air, and store it in a reservoir in his factory, and the same pipe connected therewith produced the same noise. It was held that this was a "steam whistle," and required the consent of the sanitary authority pursuant to the above section. *Herbert v. Leigh Mills Company*, 53 J. P. 679; 5 T. L. R. 449.

(c) Now the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 410.

THE METALLIFEROUS MINES REGULATION ACT, 1872.

(35 & 36 VICT. CAP. 77.)

An Act to consolidate and amend the Law relating to Metalliferous Mines.(d)
[10th August, 1872.]

* * * * * *

XIII. Where any mine to which this Act applies(e) is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred(f) the owner thereof, and every person interested in the minerals of the mine(g) shall cause the top of the shaft and any side entrance from the surface to be and be kept securely fenced for the prevention of accidents.(h)

Fencing of
abandoned
mine.

Provided that :—

- (1.) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect :
- (2.) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous :
- (3.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section he shall be guilty of an offence against this act.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866.(i)

(d) The preamble and clause of enactment of this Act have been repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

The Coal Mines Regulation Act, 1872, referred to in the preamble, has been repealed and replaced by 50 & 51 Vict. c. 58, which contains a provision in section 39, similar to that in the above Act, and is set out, *post*. See also 50 Vict. c. 19, *post*,

(e) By section 2 as amended by section 83 of the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), this Act applies to every mine of whatever description other than a mine to which the Coal Mines Regulation Act, 1887, applies (see section 3 of that Act, *post*). And by section 39, if any question arises whether a mine is a mine to which this Act or that Act applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final.

(f) This applies to mines abandoned before this Act. *Stott v. Dickinson*, 34 L. T. (N.S.) 291.

(g) Where a mine was abandoned the owner, who had let it on lease for a term of years subject to a rent or royalties, was held to be a person interested in the minerals within this section, though the lease was still in force and undetermined. *Evans v. Mostyn*, 2 C. P. D. 547 ; 47 L. J. M. C. 45 ; 36 L. T. (N.S.) 856 ; 41 J. P. 775. Where a person had a lease of a mine from the Duchy of Cornwall on the terms that he was to pay as rent all he might receive in respect of the mine, and 5s. yearly in addition, it was held that he was not the owner nor interested within this section. *Arkwright v. Evans*, 49 L. J. M. C. 82. Where a lease had expired, the lessee was held not liable, though by his covenant he had agreed to fence abandoned shafts. *Stott v. Dickinson*, *supra*.

(h) A wall round an enclosure ten acres in extent, in which there is a side entrance to a mine, is not a sufficient fence round the side entrance within the meaning of this section. *Foster v. Owen*, 62 L. J. M. C. 7 ; 67 L. T. (N.S.) 712 ; 9 T. L. R. 22.

(i) See now the Public Health Act, 1875, ss. 91 and 313, *ante*, pp. 108, 410.

Appendix.

THE BOROUGH FUNDS ACT, 1872.

(35 & 36 VICT. CAP. 91.) (a)

An Act to authorise the application of Funds of Municipal Corporations and other Governing Bodies in certain cases. [10th August, 1872.]

* * * * *

Interpretation
of terms.

I. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: Provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge. (b)

Costs of
promoting or
opposing
Parliamentary
and other
proceedings
for benefit of
inhabitants to
be charged on
borough and
local funds,
except in
certain cases.

II. When in the judgment of a governing body (c) in any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any bill in Parliament for the establishment of any gas or water-works to compete with any existing gas or water company established under any Act

(a) By the Short Titles Act, 1892 (55 & 56 Vict. c. 10), this Act may be cited as the Borough Funds Act, 1872, without prejudice to any other mode of citation. The preamble and clause of enactment were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

(b) In some previous editions of this Work it was stated that the Act applied to all sanitary authorities. It appears, however, to be the general opinion that it does not apply to rural sanitary authorities. An outbreak of fever having occurred in the defendants' district, the Local Government Board required the defendants to provide a proper water supply. The defendants applied for a provisional order, but as they proposed to interfere with certain water rights, the Local Government Board pointed out that, having regard to section 327 of the Public Health Act, 1875, *ante*, p. 415, the procedure must be by bill, and the defendants thereupon introduced a bill, which was opposed and eventually thrown out. The plaintiff had acted as the defendants' solicitor, and he claimed payment of the costs in connection with the bill from the defendants. It was argued that the provisions of the Act applied to a rural sanitary authority and that the defendants had not complied with these provisions. The court gave no decision on this point, but held that, although the defendants were bound to provide a proper supply of water, they had no duty to apply to Parliament for statutory powers, and consequently that the costs could not be recovered from the defendants. *Cleverton v. St. Germans Rural Sanitary Authority*, 56 L. J. Q. B. 83; 3 T. L. R. 43.

(c) This phrase, as defined in section 1, does not include the overseers of a parish. As to the powers of overseers to oppose a bill in Parliament for the protection of the poor rate, see *Reg. v. White*, 14 Q. B. D. 358; 54 L. J. M. C. 23; 52 L. T. (N.S.) 116; 33 W. R. 248; 49 J. P. 294. See also *Cleverton v. St. Germans Rural Sanitary Authority*, *ante*.

In *Attorney-General v. Lambeth (Vestry of)*, W. N. (1888), 19; 4 T. L. R. 257, NORTH, J., restrained the defendants from promoting a bill at the expense of the rates on the ground that they were a statutory body, and could not apply the rates for purposes outside those for which they were constituted. And in *Attorney-General v. Camberwell (Vestry of)*, 71 L. T. (N.S.) 478, NORTH, J., restrained the defendants from contributing out of the rates to the costs of legal proceedings for obtaining a declaration that a water company were not entitled to charge for supply to fixed baths.

As to opposing bills to confirm provisional orders under 51 & 52 Vict. c. 25, s. 24, see 54 & 55 Vict. c. 12, *post*.

This Act applies, with modifications, to county councils. See 51 & 52 Vict. c. 41, s. 15.

of Parliament ;(d) Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious.

Appendix.

III. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such bill shall be charged as aforesaid.

No payment to member of governing body to be so charged.

IV. No expense in relation to promoting or opposing any bill or bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such Board ;(e) and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a bill in Parliament no further expenses shall be incurred or charged as aforesaid after the deposit of the bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the bill in Parliament : Provided further, that no expense in promoting or opposing any bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act, 1858, for the adoption of that Act.(f)

Costs of promoting or opposing bills to require sanction of special meetings.

V. The approval of the Local Government Board or one of Her Majesty's principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid, until the expiration of seven days after the second publication thereof,

Proviso as to approval of Local Government Board, &c., to any such resolution.

(d) This proviso is singularly expressed, but it is understood as preventing the application of this Act to any competing bill. It may be stated that since the passing of this Act all private bills to which it applies have contained a detailed statement in the preamble of these requirements, and the committees to which they are referred have to ascertain that due proof is given of this part of the preamble. It is also to be noticed that the standing orders of the House of Lords require that where it is proposed in any bill that any local authority shall be authorised to borrow money for sanitary purposes without the sanction of the Local Government Board, estimates showing the proposed application for permanent work shall be recited therein and proved before the committee.

(e) The jurisdiction of the Local Government Board is considered to apply to all sanitary matters (including a gas undertaking under section 161 of the Public Health Act, 1875, *ante*, p. 224), and all highways and turnpike roads. In respect of all other matters not within the jurisdiction of that Board, reference must be made to the Secretary of State.

(f) See now the Public Health Act, 1875, Schedule III., *ante*, p. 438, as to the mode of obtaining this consent and as to the expenses of the meeting.

It is to be observed that this section does not take away the right under the Municipal Corporations Act, or under the general law applicable to trustees, which a municipal corporation has to defray out of the borough funds or rates, the expenses of any attack made by a bill in Parliament, whether against their existence as a corporation or against their property, or only against their rights, powers, or privileges. *Attorney-General v. Brecon (Mayor of)*, 10 Ch. D. 204 ; 48 L. J. Ch. 153 ; 40 L. T. (N.S.) 52 ; 27 W. R. 332. And see the cases cited in the notes to section 2, *ante*, and *Bower v. Sligo (Commissioners of)*, 4 Ir. Rep. C. L. 489.

The court will not grant a *mandamus* to the mayor of a borough to hold a fresh meeting under this Act after a prior meeting has been held at which a poll was refused in order that at the fresh meeting, a poll of the ratepayers might be taken, if the ratepayer applying for the *mandamus* is also one of the promoters of the bill. *Reg. v. Peterborough (Mayor of)*, 44 L. J. Q. B. 85 ; 23 W. R. 343.

The Local Government Board have declared that all the preliminary consents, including that of the owners and ratepayers, must be obtained before that Board will give their approval, and they must be supplied with a statutory declaration by a competent person showing that all the statutory notices have been given and the requisite consents obtained. As to the taking of a poll in a borough where there is no register of owners, see *Ward v. Sheffield (Mayor, &c., of)*, 19 Q. B. D. 22 ; 56 L. J. Q. B. 418.

Appendix. as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval.

Costs to be examined. VI. All costs, charges, and expenses incurred under the provisions of this Act, shall, before the same become chargeable, be examined and allowed by some person to be authorized by one of Her Majesty's principal Secretaries of State or by the Local Government Board, as the case may be.

Power to direct local inquiry. VII. The Local Government Board, or one of Her Majesty's principal Secretaries of State, shall have power to direct a local inquiry to be held upon any application under this Act by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

Saving clause. VIII. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exercisable by the inhabitants of any district under any general or special Act.

Towns Improvement Act, 1849, s. 142, repealed. IX. [*The one hundred and forty-second section of "The Towns Improvement Clauses Act, 1847," is hereby repealed so far as the same is inconsistent with the provisions of this Act.*](a)

Act not to extend to bills if object attainable by provisional order. X. The provisions of this Act shall not extend to applications for any bill in Parliament for any object which would, for the time being, be attainable by any provisional order.(b)

Act not to apply to the metropolis. XI. This Act shall not extend or apply to Ireland or the city of London or the metropolitan area as defined by the Metropolitan Local Management Act, 1855.

THE PAWNBROKERS ACT, 1872.

(35 & 36 VICT. CAP. 93.)(c)

An Act for consolidating, with Amendments, the Acts relating to Pawnbrokers in Great Britain. [10th August, 1872.]

* * * * *

Preliminary.

Short title. I. This Act may be cited as the Pawnbrokers Act, 1872.

* * * * *

Commencement of Act. III. . . . The schedules to this Act, including the notes thereto, shall have effect as part of this Act.(d)

* * * * *

Definitions ; Application of Act.

Interpretation. V. In this Act—
"Pawnbroker" includes every person who carries on the business of taking goods and chattels in pawn :

(a) Section 9 is now repealed by the Statute Law Revision Act, 1883.
(b) The Local Government Board are required to report to Parliament on every local bill relating to sanitary matters deposited in the offices prior to the meeting of Parliament, and hence they will not generally approve of any bill which proposes to introduce into any local district provisions which can be obtained by a provisional order, nor will they approve of the introduction into a local bill of provisions which the law of the land already supplies.
(c) The duties of justices with reference to pawnbrokers' certificates under this Act are now transferred to district councils by the Local Government Act, 1894, ss. 27, 32, ante, pp. 727, 730.
(d) The earlier part of this section was repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Appendix.

"Pledge" means an article pawned with a pawnbroker :

"Pawn" means a person delivering an article for pawn to a pawnbroker :

"Shop" includes dwelling-house and warehouse, or other place of business, or place where business is transacted :

"Unfinished goods or materials" includes any goods of any manufacture or of any part or branch of any manufacture either mixed or separate, or any materials whatever plainly intended for the composing or manufacturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith, and before the same are completed or finished for the purpose of wear or consumption :

"Constable" includes any peace officer :

"Justice" means justice of the peace having jurisdiction in the county or place where the matter requiring the cognizance of a justice arises :

* * * * *

VI. In order to prevent evasion of the provisions of this Act, the following persons shall be deemed to be persons carrying on the business of taking goods and chattels in pawn (that is to say), every person who keeps a shop for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and who purchases or receives or takes in goods or chattels, and pays or advances or lends thereon any sum of money not exceeding ten pounds with or under an agreement or understanding expressed or implied, or to be from the nature and character of the dealing reasonably inferred, that those goods or chattels may be afterwards redeemed or repurchased on any terms ; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan respectively within this Act.

Extension of Act to keepers of certain shops.

* * * * *

Inland Revenue Licenses.

XXXVII. Every pawnbroker shall yearly take out from the Commissioners of Inland Revenue an excise license for carrying on his business, on which license there shall be charged and paid for the use of Her Majesty, her heirs and successors, an excise duty of seven pounds ten shillings.

Yearly license and excise duty.

Every license shall be dated on the day on which it is issued and shall determine on the thirty-first day of July.

A separate license shall be taken out and paid for by a pawnbroker for each pawnbroker's shop kept by him.

If a person acts as a pawnbroker without having in force a proper license he shall for every such offence be liable to an excise penalty not exceeding fifty pounds.

All the provisions contained in any Act relating to excise licenses, duties, or penalties, and in force at the commencement of this Act, shall, as far as the same are applicable, have full effect with respect to the license and duty and penalty aforesaid.

* * * * *

XXXIX. After the passing of this Act a pawnbroker's license shall not be granted to any person except on the production and in pursuance of the authority of a certificate granted under this Act ; save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, administrators, assigns, or successors, to obtain such a certificate.(e)

Licenses not to be granted without certificate.

Any license granted in contravention of this section shall be void.

XL. Certificates under this Act shall be granted (as regards England) in the metropolitan police district by a magistrate sitting in any police court in the metropolis having jurisdiction in the district where the application is made, and in any place within the jurisdiction of a stipendiary magistrate by that magistrate, and in other places by the justices of the petty sessional division assembled at petty sessions specially convened for that purpose.(f)

Certificates to be granted by justices.

(e) This exemption is not confined to the business actually carried on by a pawnbroker at the commencement of the Act. It extends to all pawnbrokers then licensed, their executors, assigns, or successors, who may open a new business on payment of the license duty without any certificate. *Reg. v. Inland Revenue Commissioners* [1891], 1 Q. B. 485 ; 60 L. J. Q. B. 376 ; 60 L. T. (N.S.) 57 ; 38 W. R. 317 ; 55 J. P. 117.

(f) Certificates are now granted by district councils, see note (c), *ante*, p. 1002.

Appendix.

Form and duration of certificate.

Notice of first application.

Grounds of refusal of certificate.

Forgery of certificate.

Appeal to quarter sessions.

Saving for local Acts.

XLI. A certificate under this Act shall be in the form given in the Sixth Schedule to this Act, or to the like effect, and shall be in force for one year from its date.

XLII. A person intending to apply for the first time for a certificate under this Act shall proceed as follows :—

- (1.) Twenty-one days at least before the application he shall give notice by registered letter sent by post of his intention to one of the overseers of the poor of the parish or place in which he intends to carry on business, and to the superintendent of police of the district, and shall in the notice set forth his name and address ;
- (2.) Within twenty-eight days before the application he shall cause a like notice to be affixed and maintained between ten o'clock in the morning and five o'clock in the afternoon of two consecutive Sundays, on the principal door or one of the doors of the church or chapel of the parish or place, or if there is none, then on some other public and conspicuous place in the parish or place.

XLIII. An application for a certificate shall not be refused, except on the following grounds, or one of them :

- (1.) That the applicant has failed to produce satisfactory evidence of good character ;
- (2.) That the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character ;
- (3.) That he has not complied with the last preceding section.

XLIV. If any person forges a certificate, or tenders a certificate knowing it to be forged, he shall, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding six months, with or without hard labour.

A license granted in pursuance of a forged certificate shall be void ; and if any person makes use of a forged certificate, knowing it to be forged, he shall be disqualified from obtaining at any time thereafter a pawnbroker's license.

LII. If any person thinks himself aggrieved by any conviction or order of a court of summary jurisdiction under this Act, or by the refusal of a certificate for a license, he may appeal therefrom, subject to the conditions and regulations following :

- (1.) The appeal shall be made to some court of general or quarter sessions.(a) . . .

Saving.

LVII. Nothing in this Act shall repeal or in any manner interfere with the operation of any local or local and personal Act for the time being in force in any city, town, burgh, or other place.

THE SIXTH SCHEDULE.(b)

Forms of Certificates of Magistrates and Justices.

I.—ENGLAND.

I [or we] [here insert description of the magistrate or justices] do hereby certify that I [or we] do authorise the grant to A. B. of in the county of of a license to carry on the business of a pawnbroker within the township of [or parish of or other place as the case may be].

Witness my hand [or our hands] this day of , 18 .

(a) The remainder of this section is repealed by the Summary Jurisdiction Act, 1884, and the procedure on appeals is now regulated by the Summary Jurisdiction Act, 1879, s. 31, which is set out at p. 365, ante.

(b) See sections 40, 41, and the notes thereto.

Appendix.

THE FAIRS ACT, 1873.

(36 & 37 VICT. CAP. 37.)(c)

An Act to amend the Law relating to Fairs in England and Wales.

[7th July, 1873.]

* * * * *

I. This Act may be cited as "The Fairs Act, 1873."

Short title.

II. This Act shall not extend to Scotland or Ireland.

Extent of Act.

III. In this Act the term "owner" means any person or persons, or body of commissioners or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent or otherwise howsoever.

Definition of terms.

IV. [*Commencement of Act.*]

V. From and after the commencement of this Act "The Fairs Act, 1868," shall be and the same is hereby repealed.

31 & 32 Vict. c. 51, repealed.

VI. In case it shall appear to a Secretary of State, upon representation duly made to him by the justices(c) acting in and for the petty sessional division within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be held in each year on some day or days other than that or those on which such fair is used to be held or on the day or days on which such fair is used to be held and any preceding or subsequent day or days, or on or during a less number of days than those on which such fair is used to be held, it shall be lawful for a Secretary of State to order that such fair shall be held on such other day or days, or on the same day or days and any preceding or subsequent day or days, or on or during any less number of days as he shall think fit: Provided always, that notice of such representation and of the time when it shall please a Secretary of State to take the same into consideration shall if such representation shall have been made by justices(c) be given to the owner of such fair, and shall if such representation shall have been made by the owner of such fair be given to the clerk to the justices(c) acting in and for the petty sessional division within which such fair is held, and shall also be published once in the *London Gazette*, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered.

Power to Secretary of State to alter days of holding fairs.

VII. When and so soon as any such order as aforesaid shall have been made by a Secretary of State, notice of the making of the same shall be published in the *London Gazette* and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall only be held on the day or days mentioned in such order; and it shall be lawful for the owner of such fair to take all such toll or tolls, and to do all such act or acts, and to enjoy all and the same rights, powers, and privileges in respect thereof, and enforce the same by all and the like remedies, as if the same were held on the day or days upon which it was used to be held previous to the making of such order.

Order of Secretary of State to be published in certain newspapers.

All rights, &c., of owner to remain good.

(c) The powers and duties of justices under this Act are transferred to district councils by the Local Government Act, 1894, ss. 27, 32, *ante*, pp. 727, 730. The sections and parts of sections repealed by the Statute Law Revision (No. 2) Act, 1893, have been here omitted. See also 34 & 35 Vict. c. 12, *ante*, p. 972.

Appendix.

THE GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT ACT, 1873.

(36 & 37 VICT. CAP. 89.) (a)

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870. [5th August, 1873.]

Short title.

I. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873." (b)

Power of Board of Trade to revoke amend, extend, or vary provisional order.

XII. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade (c) have made any provisional order, they may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order.

Authorising and regulating inquiries by the Board of Trade for purposes of Gas and Water Works Facilities Act, 1870, and this Act.

XIII. Where, in relation to any application for a provisional order under the Gas and Water Works Facilities Act, 1870, or under this Act, it is in the opinion of the Board of Trade expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following:—

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade, hereinafter called the commissioner or commissioners:
2. Ten days' notice at the least shall be given by the commissioner or commissioners of the time and place at which the inquiry is to be commenced:
3. The inquiry shall be commenced at the time and place so appointed, and the commissioner or commissioners may adjourn the inquiry from time to time as may be necessary to such time and place as he or they may think fit:
4. The commissioner or commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him or them, and every person summoned shall attend the commissioner or commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the commissioner or one of the commissioners for the purposes of the said inquiry shall, on summary conviction before two justices . . . be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid, or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode:
5. The commissioner or commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon the request to all or any of the parties to the inquiry.

Rules for carrying Acts into effect.

XIV. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters. (d)

(a) See 33 & 34 Vict. c. 70, *ante*, p. 942. The clause of enactment of this Act has been repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

(b) Sections 2 to 11 and the schedule to this Act were repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(c) The Local Government Board are substituted for the Board of Trade so far as regards provisional orders for the supply of gas by an urban authority. See section 161 of the Public Health Act, 1875, *ante*, p. 224.(d) See the General Order of the Local Government Board, September 7th, 1891, in Appendix II., *post*.

Appendix.

The proceedings to be had before the board under the Gas and Water Works Facilities Act, 1870, or this Act; and

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

XV. This Act shall not apply to any place within the Metropolis as the same is defined in "The Metropolis Management Act, 1855."

Act not to extend to metropolis.

* * * * *

THE SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 VICT. CAP. 63.)*(e)*

An Act to make better provision for the Sale of Food and Drugs in a pure state. [11th August, 1875.]

* * * * *

I.*(f)*

II. The term "food" shall include every article used for food or drink by man, other than drugs or water.*(g)*

Interpretation of words.

The term "drug" shall include medicine for internal or external use :

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough :*(h)*

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England.

Description of Offences.

III. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material, so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.*(i)*

Prohibition of the mixing of injurious ingredients, and of selling the same.

IV. No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be

Prohibition of the mixing of drugs with injurious ingredients.

(e) See the amending Act, 43 & 44 Vict. c. 30, *post*. Part of the title, and the preamble and clause of enactment of this Act have been repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

(f) This section repealed previous Acts, and is now itself repealed by the Statute Law Revision Act, 1883.

(g) Held by the Recorder of Cambridge (J. R. Bulwer, Esq., Q.C.), that baking powder is not food. *Warren v. Phillips*, 44 J. P. 61. So also by the High Court. *James v. Jones* [1894], 1 Q. B. 304; 63 L. J. M. C. 41; 70 L. T. (N.S.) 351; 42 W. R. 400; 58 J. P. 230; 10 T. L. R. 203. Chewing-gum is not food. *Shortt v. Smith*, 59 J. P. 213*n*; 11 T. L. R. 326.

(h) And every liberty having a separate court of quarter sessions other than a cinque port. 42 & 43 Vict. c. 30, s. 7, *post*.

(i) In the case of offences under these sections it is a defence to prove want of knowledge. Per SMITH, J., in *Betts v. Armstead*, *infra*. (See section 5.)

Appendix.

dients, and of
selling the
same.

Exemption in
case of proof
of absence of
knowledge.

Prohibition of
the sale of
articles of food
and of drugs

sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.(a)

V. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered, as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

VI. No person(b) shall sell to the prejudice of the purchaser(c) any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser.(d) under a penalty not exceeding twenty pounds;

(a) See note (i), p. 1007.

(b) H., who was a servant of the F. Dairies Company, and acting as such, sold milk containing 12 per cent. of added water. It was held that he was properly convicted as the person selling. *Hutchin v. Hindmarsh* [1891], 2 Q. B. 181; 60 L. J. M. C. 146; 65 L. T. (N.S.) 149; 39 W. R. 607; 57 J. P. 775. But the employer is also responsible. The servant of B., in selling B.'s milk, mixed water with it contrary to the directions of B. It was held that B. was properly charged as the person selling, and that the question whether B. connived at the servant's act was only material for the purpose of determining the amount of the penalty. *Brown v. Foot*, 61 L. J. M. C. 110; 66 L. T. (N.S.) 649; 56 J. P. 581; 17 Cox C. C. 509; 8 T. L. R. 268. R., the servant of H., a milk dealer, accidentally spilled some of his master's milk, and, to prevent loss to his master, filled in water to make up the quantity, and sold the diluted milk to customers. It was held that R. had not committed the offence of wilfully or maliciously damaging property of his master, contrary to the above section. *Hall v. Richardson*, 54 J. P. 345; 6 T. L. R. 71.

(c) It is not now a defence that the article was purchased for analysis. See 42 & 43 Vict. c. 30, s. 2, *post*. As to sale of spirits, see section 6 of the same Act, *post*. It is no defence that the article was purchased with money belonging to the authority. *Hoyle v. Hitchman*, 4 Q. B. D. 233; 48 L. J. M. C. 97; 43 J. P. 430. When the seller of an article brings to the purchaser's knowledge the fact that the article sold to him is not of the nature, quality, or substance of the article which he demands, the sale is not to his prejudice within this section. *Sandys v. Small*, 3 Q. B. D. 449; 47 L. J. M. C. 115; 39 L. T. (N.S.) 118; 26 W. R. 814; *Collett v. Walker*, 64 L. J. M. C. 267; 59 J. P. 600; 11 T. L. R. 572; and he may purchase the article by an agent. *Horder v. Scott*, 5 Q. B. D. 552; 49 L. J. M. C. 78; 44 J. P. 520; *Stace v. Smith*, 45 J. P. 141.

(d) Proof of *mens rea* does not appear to be necessary. See *Fitzpatrick v. Kelly*, L. R. 8 Q. B. 337; *Mullins v. Collins*, L. R. 9 Q. B. 292; *Roberts v. Egerton*, *ib.* 494. The provisions of the Bread Act (6 & 7 Will. 4, c. 37), as to using alum in the manufacture of bread, may be referred to and compared with the text; also the cases decided on that Act. *R. v. Dixon*, 3 M. & S. 11; *Core v. James*, L. R. 7 Q. B. 135; 25 L. T. (N.S.) 593; 35 J. P. 740. It has now been decided that an offence against this section is committed, although the seller did not know that the article sold was not of the nature, substance, and quality demanded. *Betts v. Armstead*, 20 Q. B. D. 771; 57 L. J. M. C. 100; 58 L. T. (N.S.) 811; 36 W. R. 720; 52 J. P. 471; 16 Cox C. C. 418. And see *Pain v. Boughtwood*, 24 Q. B. D. 353; 59 L. J. M. C. 45; 62 L. T. (N.S.) 284; 38 W. R. 428; 54 J. P. 469; 6 T. L. R. 167; 16 Cox C. C. 747; *Brown v. Foot*, *supra*; *Hall v. Richardson*, 54 J. P. 345; 6 T. L. R. 71; *Reg v. Field*, 64 L. J. M. C. 158; 11 T. L. R. 240. And compare *Kearley v. Tyler*, cited in the notes to section 9, *post*.

Lard adulterated with 15 per cent. of water is not the article demanded by a purchaser who asks for lard. *Rook v. Hopley*, *post*, p. 1014. Where the purchaser asked for cream, and was supplied with cream at 1d. per gill, which was found on analysis to have been diluted with 34 per cent. of skimmed milk, and it was proved that the seller had for sale a superior quality of cream diluted with less skimmed milk, which he sold at a high price, it was held that the seller had not committed an offence in selling the inferior cream at a lower price. *Morton v. Green*, 8 Ct. of Sess. Cas., 4th series, 36; 4 Cowper, 457. Where the only evidence was the report of the public analyst that milk had been diluted with 27 per cent. of added water, and the magistrate dismissed the charge, the court refused to interfere, holding that it was a question of fact whether, taking into consideration the whole circumstances of the case, the article was not of the nature, quality, and substance demanded by the purchaser. *Macleod v. O'Neill*, 9 Ct. of Sess. Cas., 4th series (J. C.), 32. An inspector who asked for "milk" was supplied with skimmed milk, which, by reason of being skimmed, was deficient in butter fat. It was held that no offence had been committed under this section. *Lane v. Collins*, 14 Q. B. D. 93; 54 L. J. M. C. 76; 52 L. T. (N.S.) 257; 33 W. R. 365; 49 J. P. 89. As to the dilution of beer with beer of inferior quality, see *Crofts v. Taylor*, 3 T. L. R. 844. The section applies not only to sales of adulterated articles, but also to cases where the

provided that an offence shall not be deemed to be committed under this section in the following cases ; (that is to say,) **Appendix.**

- (1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof ;(e) not of the proper nature, substance, and quality.
- (2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent ;
- (3.) Where the food or drug is compounded as in this Act mentioned ;
- (4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.(f)

VII. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds. Provision for the sale of compounded articles of food and compounded drugs.

VIII. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.(g) Protection from offences by giving of label.

article sold is not adulterated, but wholly different from that demanded, for example, when saffron is delivered for saffron. *Knight v. Bowers*, 14 Q. B. D. 845 ; 54 L. J. M. C. 108 ; 53 L. T. (N.S.) 235 ; 33 W. R. 613 ; 49 J. P. 614 ; 15 Cox C. C. 728. To constitute an offence against this section the representation of the nature, substance, and quality of the article must be made at the time of the sale. A prior false representation is no offence, provided that a true one is made at the time when the sale actually takes place. *Kirk v. Coates*, 16 Q. B. D. 49 ; 55 L. J. M. C. 182 ; 54 L. T. (N.S.) 178 ; 34 W. R. 195 ; 50 J. P. 148. Upon a summons alleging an offence against this section, the defendant may be convicted although the facts show a seizure under section 3 of 42 & 43 Vict. c. 30, *post*, if he does not apply for an amendment or adjournment under section 1 of the Summary Jurisdiction Act, 1848. *Hiett v. Ward*, 70 L. T. (N.S.) 374 ; 58 J. P. 461 ; 10 T. L. R. 284.

(e) Mustard mixed with flour and turmeric not sold as pure mustard was held not to be within the corresponding provisions of a former Act. *Pope v. Tearle*, L. R. 9 C. P. 499 ; 43 L. J. M. C. 129 ; 30 L. T. (N.S.) 789 ; but *quære*, if mustard simply had been asked for. See *Sandys v. Markham*, 41 J. P. 52. See also *Horder v. Grainger*, 44 J. P. 488 ; *Goldsmith v. Maddaford*, 46 J. P. 44. Where a drug is asked for which is included in the British Pharmacopœia it must be supplied as therein described. *White v. Bywater*, 10 Q. B. D. 582 ; 36 W. R. 280 ; 51 J. P. 821.

(f) See per BLACKBURN, J., in *Roberts v. Egerton*, *ante*, p. 1008. It was held that this sub-section protected a person who sold buttermilk mixed with water, as water was necessarily added in the process of manufacture. *Warnock v. Johnstone*, 8 Ct. of Sess. Cas., 4th series, 55 ; 4 Cowper, 508. The appellant sold butter in which was found 21½ per cent. of water, and the justices convicted him. The case did not state, however, that the water was fraudulently added within sub-section (1), or that the butter was unavoidably mixed with water under sub-section (4). The court remitted the case for further findings on these points, and intimated that if the water was unavoidably added, a conviction should not follow. *Bosomworth v. Bridge*, 81 L. T. 180 ; 36 S. J. 594.

(g) Where a label was used stating that an article purchased as coffee was a mixture of coffee and chicory, on analysis the coffee was only 60 per cent., and the justices found that the chicory was used fraudulently to increase the bulk, the court held that they were right. *Liddiard v. Reece*, 44 J. P. 233. The magistrate must find whether the chicory is fraudulently intended to increase the bulk, and if he so finds, he must convict. *Horder v. Meddings*, *ib.* 234. But if he does not so find and convicts, the conviction will be quashed. *Otter v. Edgley*, 57 J. P. 457. A sale of a mixture represented to be of coffee and chicory when there was only 30 or 50 per cent. of coffee was held not to be an offence in *Higgins v. Hall*, 51 J. P. 293. Where there is no other evidence of fraud, the label is sufficient, although the type in which it is printed is so small as to require a magnifying glass for reading it. *Attfield v. Tyler*, 57 J. P. 357. Notice may be given verbally at the time of sale as well as by label. *Gage v. Elsey*, 10 Q. B. D. 518 ; 52 L. J. M. C. 44 ; 48 L. T. (N.S.) 226 ; 31 W. R. 501 ; 47 J. P. 391 ; and see *Sandys v. Small*, *ante*, p. 1008. It is sufficient to give notice that an article is mixed without stating the ingredients or proportions. See

Appendix.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

IX. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from any article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.(a)

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

Appointment of analysts.

X. In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament, or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food

Pope v. Tearle, L. R. 9 C. P. 499; 43 L. J. M. C. 129; 30 L. T. (N.S.) 789; *Goldsmith v. Maddaford*, 46 J. P. 44. A label on a packet of cocoa, which contained starch and sugar, was held sufficient protection as it stated as follows: "This contains cocoa combined with other ingredients—pure and wholesome, and guaranteed in accordance with the Act of Parliament." *Jones v. Jones*, 58 J. P. 653; 10 T. L. R. 300. The shopman of K., in selling lard, wrapped it in the wrong wrapper, owing to the shop being crowded, the wrapper representing the lard to be margarine instead of lard compound. It was held that K. was entitled to give evidence that the shopman acted under mistake, and contrary to his orders, in placing the lard in a margarine wrapper. *Kearley v. Tyler (or Tonge)*, 60 L. J. M. C. 159; 65 L. T. (N.S.) 261; 56 J. P. 72; 17 Cox C. C. 328.

T. went into J.'s public house, and without going into the bar or kitchen, went into a club-room and asked for whiskey, and that supplied was 37 degrees under proof. A notice that "all spirits sold are diluted" was stuck up in the bar and kitchen, but not in the club-room and nothing was said to T. on delivery. It was held that the justices ought to have inquired before deciding the case whether T. knew that the practice was at J.'s house to sell only diluted spirits, in which case no conviction was proper. *Morris v. Johnson*, 54 J. P. 612; 6 T. L. R. 171. A publican being asked for rum, said he had two qualities, one at 1s. and the other at 1s. 2d., and the quality at 1s. was supplied and found to be 38 degrees under proof. A notice was stuck up in the house that all spirits sold here are diluted in accordance with the new excise regulations. It was held that this was not in itself a protection, but the justices ought to determine whether the purchaser was prejudiced. *Morris v. Askew*, 57 J. P. 724.

(a) A person selling the altered article may be convicted, although at the time of the sale he did not know of the alteration. *Pain v. Boughtwood*, ante, p. 1008. The words "so altered" refer to a physical alteration of the article, irrespective of the intent with which the alteration is made. The respondent, a retail milk seller, poured into a pail eight barn gallons of unskimmed milk, which she sold therefrom in small quantities to her customers, dipping it out of the pail from time to time with a measure. The sale of the contents of the pail extended over a space of between four and five hours, during the whole of which time, owing to the neglect of the respondent to keep the milk stirred, the cream was continually rising to the surface. When not more than two quarts of milk remained in the pail, the appellant purchased from the respondent a pint of milk, which was served to him from the pail, and which, upon analysis, showed a deficiency of 33 per cent. of fatty matter. The respondent did not disclose the deficiency to the appellant. The deficiency was entirely due to the manner in which the earlier customers had been served. It was held that the respondent, in so selling the milk to the appellant without disclosing its condition, was guilty of an offence against the above section. *Dyke v. Gower* [1892], 1 Q. B. 220; 61 L. J. M. C. 70; 65 L. T. (N.S.) 760; 56 J. P. 168; 17 Cox C. C. 421. See further upon this section, with reference to separate offences in respect to different samples of milk taken at the same time. *Fleet v. Walsh*, the facts of which are set out in the notes to 42 & 43 Vict. c. 30, s. 3, post. The servant of C., a dairyman, being short in his supply of milk, bought two gallons from another dairyman, and mixed it with his own, and sold it to customers. Upon a charge against C., under the above section, it was held that though neither C. nor his servant knew that the bought milk was adulterated, this was no defence. *Morris v. Corbett*, 56 J. P. 649. On a sale of condensed milk in a tin where there was a label on the tin stating that it contained condensed milk, and, in smaller print, that it contained skimmed milk, and this was held a sufficient disclosure of the alteration. *Jones v. Davies*, 9 T. L. R. 492; 62 L. T. (N.S.) 497; 57 J. P. 808. See also *Platt v. Tyler*, 58 J. P. 71.

and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.(b)

Appendix.

* * * * *

XI. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act. Town council of a borough may engage the analyst of another borough or of the county.

XII. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis. Power to purchaser of an article of food to have it analysed.

XIII. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.(c) Officer named to obtain a sample of food or drug to submit to analyst.

XIV. The person purchasing(d) any article with the intention of submitting the Provision for dealing with

(b) The remainder of this section related solely to Scotland and Ireland and is therefore omitted. The powers of the quarter sessions under this section are now transferred to the county council by the Local Government Act, 1888, s. 3 (x). The powers of the smaller boroughs are also transferred to the same body by sections 38, 39 of that Act, *ante*, p. 511.

(c) As to obtaining samples of milk, see 42 & 43 Vict. c. 30, s. 3, *post*. In *Johnston v. Smith*, Times, 9th June, 1894, an action was brought against an analyst for negligence in giving a wrong certificate, but the jury found for the defendant.

(d) Or his agent: see *Horder v. Scott*, *ante*, p. 1008. Where a sanitary inspector purchased by his agent, and then himself entered the shop and gave notice, &c., under this section, it was held that this was a sufficient compliance with the Act. *Stace v. Smith*, 45 J. P. 141. An inspector sent his servant into a public-house to purchase a bottle of gin. When the servant had been in the house a minute and had paid for the gin, the inspector entered. It was held the inspector was the purchaser. *Gairforth v. Esam*, 56 J. P. 521; 8 T. L. R. 243. And see *Somersct v. Miller*, *post*. It was formerly held that the provisions of this section apply to a purchase by a private person as well as to a purchase by a public officer. *Parsons v. Birmingham Dairy Company*, 9 Q. B. D. 172; 51 L. J. M. C. 111; 30 W. R. 748; 46 J. P. 727. This decision was dissented from in *Enniskillen Guardians v. Hilliard*, 14 L. R. Ir. 214, when it was held that the provisions of the section do not apply to the purchase of an article unless for analysis, and therefore it is not a condition precedent to the right of a purchaser for consumption to take proceedings for a penalty under the Act, that he should have given to the seller the notification required by the section. And the Irish case has now been approved and followed in preference to the English one in the case of *Buehler v. Wilson*, W. N. (1895) 156 (7); 30 L. J. Notes 745. D. purchased from the appellant a pint of milk, and after the purchase was completed told the vendor that he intended to have

Appendix.

the sample
when pur-
chased.

same to analysis shall, after the purchase shall have been completed, forthwith (a) notify to the seller or his agent (b) selling the article his intention to have the same analysed by the public analyst, (c) and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

Provision when
sample is not
divided.

XV. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts, and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision for
sending article
to the analyst
through the
post-office.

XVI. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, (d) subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person refusing
to sell any
article to any
officer liable to
penalty.

XVII. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food, or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds. (e)

the milk analysed, and offered to divide it with the vendor, which offer was refused. It was held that the provisions of the section had been sufficiently complied with. *Chappell v. Emson*, 48 J. P. 200.

(a) An inspector, standing outside, sent a constable into the inn of M. to buy gin, and after the constable came out both went inside two minutes later and told M. that the purchase was for analysis, and divided it. It was held that there had been a notification forthwith to satisfy this section. *Somerset v. Miller*, 54 J. P. 614.

(b) A railway porter delivering milk on arrival at a railway station is not the vendor's agent. See *Rouch v. Hall*, *infra*.

H., a milk contractor, had contracted to deliver daily to W. a certain quantity of milk. One morning J., a servant of H., drove up with the milk and delivered it from a van. P., acting on instructions from W., took a sample from one churn, which he placed in three bottles, and he gave one bottle to J., stating that the others were to be sent to the public analyst. It was held that J. was not an agent of H. within the above section, and that the above section did not apply to such a case, the proper procedure being under section 3 of the Act of 1879, *post*. *Harris v. Williams*, 6 T. L. R. 47.

(c) It is not enough to notify that the article is for analysis simply. *Barnes v. Chipp*, 3 Ex. D. 176; 47 L. J. M. C. 85; 38 L. T. (N.S.) 570; 26 W. R. 635. Notice must be given that the analysis is to be by the public analyst; but notice of analysis by the "county analyst" was held sufficient in *Wheeler v. Webb*, 51 J. P. 661. This section need not be complied with in case of a purchase of milk under 42 & 43 Vict. c. 30, s. 3, *post*. *Rouch v. Hall*, 6 Q. B. D. 17; 50 L. J. M. C. 6; 29 W. R. 304; 45 J. P. 220; *Rolfe v. Thompson* [1892], 2 Q. B. 196; 61 L. J. M. C. 184; 67 L. T. (N.S.) 295; 56 J. P. 465; 17 Cox C. C. 551; 8 T. L. R. 644; and see *Chappell v. Emson*, *supra*. But in all other cases the notification under this section and the subsequent analysis are conditions precedent to a prosecution even if the seller at the time of purchase has admitted the commission of an offence against the Act. *Smart v. Watts* [1895], 1 Q. B. 219; 64 L. J. M. C. 89; 71 L. T. (N.S.) 768; 43 W. R. 379; 59 J. P. 54; 11 T. L. R. 144.

(d) The words "registered parcel" are now to be substituted for for the words "registered letter" in the above section. 54 & 55 Vict. c. 46, s. 11, *post*.

(e) As to the penalty for refusing to supply samples of milk, see 42 & 43 Vict. c. 30, s. 4, *post*. Section 5 of that Act extends this section to sales in the streets. After a purchase by an inspector and his announcement that the purchase was for analysis, the respondent snatched the tin out of the inspector's hand, showed him the label on it, and refused to give it back, though offering to return the money. It was held that the respondent could not be convicted of larceny. *Hewson v. Gamble*, 56 J. P. 101.

XVIII. The certificate of the analysis shall(*f*) be in the form set forth in the schedule hereto, or to the like effect. **Appendix.**

Form of the certificate.
Quarterly report of the analyst.

XIX. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

Proceedings against Offenders.

XX. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Proceedings against offenders.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three. . . . (*g*)

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be recalled if required.

XXI. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, (*h*) and the parts of the articles retained by the person who purchased the article shall be

Where a publican refused to sell to an inspector rum for analysis out of a glass bottle from which he had already sold him some for drinking, the inspector not being known to the publican nor in uniform, nor having with him any certified copy of the general resolution of quarter sessions under which he was acting, nor communicating his authority even verbally to the publican, it was held that the publican might, nevertheless, be convicted of an offence under this section. *Payne v. Hack*, 58 J. P. 165.

Section 17 of the Food and Drugs Act, 1875, applies to articles of food, &c., exposed for sale by wholesale as well as by retail. *M'Hugh v. M'Grath* [1894], 2 I. R. 78; 27 Ir. L. T. 102.

(*f*) The Middlesex Sessions held that this certificate was a condition precedent to the conviction, and that if it were not in the prescribed form the conviction must be quashed. *Peart v. Barstow*, 44 J. P. 699. The certificate need not set out the constituent parts of the sample analysed where the case is not one of adulteration; it need only state the result of the analysis. The "observations" which in the form given in the schedule follow after the result of the analysis are only to be made where the case is one of adulteration; but the addition, in cases where adulteration is not charged, of "observations" amounting only to an expression of opinion on the part of the analyst and not to a finding of fact, although unauthorised and improper, will not necessarily vitiate the certificate. *Bakewell v. Davis* [1894], 1 Q. B. 297; 63 L. J. M. C. 93; 69 L. T. (N.S.) 832; 58 J. P. 228. Where adulteration is charged the certificate must state the constituent parts of the sample, as, for instance, on a charge of selling adulterated rum the certificate found that the sample contained an excess of water over and above what is allowed by Act of Parliament estimated at 13 per cent. of the entire sample, and this certificate was held insufficient. *Newby v. Sims* [1894], 1 Q. B. 478; 63 L. J. M. C. 228; 70 L. T. (N.S.) 105; 58 J. P. 263; 10 R. 596.

(*g*) The remainder of this paragraph of this section relates solely to Ireland and is therefore omitted. As to the time within which proceedings must be taken and the delivery of particulars of the offence charged, see 42 & 43 Vict. c. 30, s. 10, *post*. As to the application of section 1 of the Summary Jurisdiction Act, 1848, respecting amendment of process, see *Liott v. Ward*, *ante*, p. 1009.

Where a constable prosecutes it is not necessary as a condition precedent to prove that he was directed to prosecute by the local authority who appointed him. *Hale v. Cole*, 55 J. P. 376.

(*h*) Therefore, if no evidence is tendered by the defendant the magistrate must act on the certificate, and convict. *Harrison v. Richards*, 45 J. P. 552. But see *Macleod v. O'Neill*, *ante*.

Appendix.

Defendant and his wife may be examined.

Power to justices to have articles of food and drug analysed.

Appeal to quarter sessions.

In any prosecution defendant to prove that he is protected by exception or provision.

Defendant to be discharged if he prove that he bought the article in

produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

XXII. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.(a)

XXIII. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace. . . .(b)

* * * * *

XXIV. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

XXV. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect,(c) that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state

(a) It was held by the Court of Session in Scotland that the reference in this section to the chemical officers of Somerset House is for the purpose of obtaining the result of their analysis merely, and that, therefore, their opinion as to what is the minimum percentage of fat to be found in new milk cannot be received as evidence. *Dargie v. Dunbar*, 11 Ct. of Sess. Cas., 4th series (J.C.) 37.

(b) This paragraph of this section is here printed as it is left unrepealed by the Summary Jurisdiction Act, 1884, which substitutes the corresponding provisions of the Summary Jurisdiction Acts. The remainder of this section relates solely to Ireland and is therefore omitted.

(c) An invoice describing an article as lard when the lard was adulterated with water was held not to be a warranty. *Rook v. Hopley*, 3 Ex. D. 209; 38 L. T. (N.S.) 649; 26 W. R. 663; 42 J. P. 551. A written contract to supply new and pure milk is not a warranty within this section. *Harris v. May*, 12 Q. B. D. 97; 53 L. J. M. C. 39; 48 J. P. 261. Lard was bought in skins from the manufacturers stamped with the words "warranted pure," and was sold in the same state, but this was held no sufficient warranty. *Elder v. Smithson*, 57 J. P. 809; 10 Times L. R. 61; 38 Sol. Journ. 155.

But where a firm of lard manufactures contracted in writing for the sale of lard to the defendant in these terms: "We have this day sold you three tons Kilvert's pure lard for delivery to end of January," and a parcel of lard was accordingly consigned to the defendant under that contract, part of which was sold by him in the same state as it was in when he bought it, as and for lard; but it was found on analysis to be adulterated, it was held that the written contract contained a sufficient warranty (*Harris v. May*, distinguished). *Laidlaw v. Wilson* [1894], 1 Q. B. 74; 63 L. J. M. C. 35; 42 W. R. 79; 58 J. P. 58; 10 T. L. R. 18. So, also, where the defendant bought from G. and Co. a cask of vinegar bearing a printed label "Vinegar, warranted unadulterated—G. and Co., Limited, Cumberland Market, London," it was held a sufficient warranty. *Lindsay v. Rook*, 63 L. J. M. C. 231; 58 J. P. 735.

But where the appellant sold ginger out of a tin canister bearing the manufacturer's label, "Warranted pure ground ginger," and proved that he bought it from a wholesale dealer (not the manufacturer) in the same state as when he sold it, the invoice also stating it to be ground ginger, it was held that there was no sufficient warranty within this section, and that in order to constitute a warranty there must be some express individual representation in writing by the vendor as part of the bargain. *Irons v. Van Tromp*, 64 L. J. M. C. 171; 72 L. T. (N.S.) 499; 59 J. P. 246; 11 T. L. R. 320. See, however, *Hackins v. Williams*, 59 J. P. 533; 11 T. L. R. 425. If the defendant relies on a warranty given to him by the person from whom he bought the article he must prove that he sold it in the same state as when he

as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

Appendix.

the same state as sold, and with a warranty.

XXVI. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner . . . (d)

No costs except on issues proved against him.

Application of penalties.

XXVII. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate, or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour;

Punishment for forging certificate of warranty;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for wilful mis-application of warranty;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for false warranty;

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

for false label.

XXVIII. Nothing in this Act contained shall affect the power of proceedings by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Proceedings by indictment and contracts not to be affected.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold

received it, and it is not enough for him to say that he had no reason to believe it had been adulterated whilst in his possession. *Jones v. Bertram*, 58 J. P. 478; 10 T. L. R. 285.

S., an inspector, charged F. with unlawfully selling milk not of the substance, &c., demanded. The milk was found to have 20 per cent. of fat extracted. The defence of F. was that he had a contract for supplying pure milk, and the milk had been sold in the same state in which it was received. The contract was to supply F. with 100 gallons daily of the best milk, and the vendor warranted the quality of such milk. Each churn when delivered had a label describing it as genuine new milk. It was held that the magistrate was wrong in treating the contract and label to be a description only, as it was a warranty within the meaning of the Act, and a valid defence. *Farmers Dairies Company v. Stevenson*, 63 L. T. (N.S.) 776; 60 L. J. M. C. 70; 55 J. P. 407; 17 Cox, C. C. 201.

Milk was consigned to the F. Dairies Company by railway in cans bearing labels which stated that the contents were "warranted genuine new milk with all its cream on. From R. T.;" and there was a written agreement between the F. Dairies Company and R. T. whereby he contracted to supply them for six months with milk warranted pure and with all its cream on. H. did not test the milk on receiving it, although he had an instrument for the purpose, and frequently tested milk when so received by him. It was held that this section was not applicable, and that even if it would have entitled H. to be discharged from the proceedings, he had not established that at the time when he sold the milk, and he had no reason to believe that its quality was otherwise than as demanded of him by the respondent. *Hutchin v. Hindmarsh* [1891], 2 Q. B. 181; 60 L. J. M. C. 146; 65 L. T. (N.S.) 149; 39 W. R. 607; 57 J. P. 775.

(d) The remainder of this section applies to Ireland only.

Appendix. to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

Expenses of Executing the Act.

Expenses of executing Act. XXIX. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis, by any rates, or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate(a)

Special Provision as to Tea.

Tea to be examined by the Customs on importation. XXX. . . . all tea imported as merchandise into and landed at any port in Great Britain or Ireland, shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships' stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.(b)

Interpretation of Act. XXXI. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Provision for the liberty of a cinque port. XXXII. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

XXXIII.(c)

XXXIV.(c)

XXXV. [*Commencement of the Act.*]

Title of the Act. XXXVI. This Act may be cited as "The Sale of Food and Drugs Act, 1875."

(a) The remainder of this section relates to Ireland only. Quarter sessions boroughs are not to contribute to the payment of the county analyst: 42 & 43 Vict. c. 30, s. 8, *post*. As to boroughs with separate police, see section 9 of the same Act. See the notes to these sections, *post*.
(b) Some words at the beginning of this section were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). A person who represents tea to be good when it is in fact unfit to drink may be convicted of obtaining money by false pretences. See *R. v. Foster*, 2 Q. B. D. 301; 46 L. J. M. C. 128; 41 J. P. 295. As to the sale of green tea in the same state as imported, see *Roberts v. Egerton, ante*, p. 1008.
(c) Section 33 relates to Scotland, and section 34 to Ireland only. Section 35 was repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

SCHEDULE.

FORM OF CERTIFICATE.

To*

I, the undersigned, public analyst for the _____, do hereby certify that I received on the _____ day of _____, 18____, from† _____ a sample of _____ for analysis (which when weighed‡ _____), and have analysed the same, and declare the result of my analysis to be as follows :—

I am of opinion that the same is a sample of genuine _____

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations.§

As witness my hand this _____ day of _____ .

A. B.,

at _____ .

* Here insert the name of the person submitting the article for analysis.

† Here insert the name of the person delivering the sample.

‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

§ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

Appendix.

THE LOCAL LOANS ACT, 1875.

(38 & 39 VICT. CAP. 83.)(a)

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August, 1875.]

* * * * *

(1.) Preliminary.

- Short title.
- I. This Act may be cited for all purposes as “The Local Loans Act, 1875.”
- Limits of Act.
- II. This Act shall not extend to Scotland or Ireland.
- III. [*Commencement of Act.*]

Definition of borrowing under Act.

IV. A local authority(b) shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock(c) or annuity certificates, purporting to be created under its powers, or partly in one way, and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.(d)

(2.) Debentures.

Regulations as to debentures.

V. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate(e) or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.
Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.
The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.
A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.
A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.
There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.
A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.
A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

(a) This Act is amended by 48 & 49 Vict. c. 30, *post*. The preamble and clause of enactment and section 3 of this Act were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).
(b) See the definition of local authority in section 34, *post*. The term includes sanitary authorities.
(c) This Act itself does not give power to issue debenture stock. See section 6, *post*.
(d) As to what is the prescribed mode, see section 34, *post*.
(e) See the definition in section 34, *post*.

Appendix.(3.) *Debenture Stock.*(f)

VI. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock.(g) Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorised to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof. Regulations as to debenture stock.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer)(h) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock, in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

(4.) *Annuity Certificates.*

VII. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified. Regulations as to annuity certificates.

(f) As to composition for stamp duty on the stock and funded debt of any corporation and on any share warrant or stock certificate relating thereto, see section 115 of the Stamp Act, 1891 (54 & 55 Vict. c. 39).

(g) Therefore there must be power under a special Act to issue debenture stock.

(h) As to stamp duty on stock certificates to bearer, see sections 108, 109 and schedule of the Stamp Act, 1891 (54 & 55 Vict. c. 39).

Appendix.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or where no sum is prescribed, than three pounds.

(5.) *Priority of Loans.*

Priority of loans.

VIII. All sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorised to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorised to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) *Notice of Trusts.*

Notice of trust not receivable.

IX. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act.

Owners of securities not responsible for acts of local authority.

X. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

(7.) *Remedy for Non-Payment.*

Remedy by *mandamus* for non-payment of money.

XI. The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a *mandamus* will be granted to enforce the payment thereof ; and an action may be brought accordingly, in which a *mandamus* may be claimed.

Remedy by appointment of receiver for non-payment of money.

XII. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any

direction which may be given by the court) shall from time to time raise as herein-after mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Appendix.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(8.) Discharge of Loan.

XIII. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; (that is to say,)

Loan borrowed to be discharged within prescribed period.

By the issue of annuity certificates limited to expire within the prescribed period; or

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or,

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or,

Where a sinking fund is prescribed, but not otherwise, (a) by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

XIV. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

Discharge of loan by appropriation of annual sum.

(a) It is provided by the 48 & 49 Vict. c. 30, *post*, that, notwithstanding anything contained in the above Act, every loan borrowed in manner provided by the above Act, may be discharged by the establishment of a sinking fund as therein mentioned, notwithstanding that a sinking fund may not have been prescribed by the special Act authorising the loan.

Appendix.

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in the presence of the local authority, and any owners of debentures or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

Discharge of
loan by sinking
fund.

XV. Where a sinking fund is prescribed^(a) for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned; (that is to say,)

- (1.) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority (regard being had to the securities in which they are authorised to make investment) will at the expiration of some period, not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,
- (2.) The first of such payments shall be made within one year from the date of the loan; and,
- (3.) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorised to invest, or in debentures, or debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed, and all dividends and other annual sums received in respect of such investments shall as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and,
- (4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose;
- (5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. When the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned;
- (6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient;
- (7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act:

(a) See the note to section 13, *ante*.

(8.) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sum required by this section to be paid into the sinking fund may cease to be so paid.

Appendix.

XVI. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the board from time to time directs, (b) showing the amount which has been invested or applied for the purpose of such sinking fund during the next year preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by *mandamus*.

Annual return as to sinking fund.

SUPPLEMENTAL PROVISIONS.

(1.) *As to Coupons.*

XVII. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

Temporary issue of coupons.

XVIII. A coupon payable to order, which, when presented for payment, purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any indorser.

Endorsement and crossing of coupons.

Where a coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or of the words "and company," in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

XIX. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall, for the purposes of the Acts relating to stamp duties, be deemed to have been attached to and issued with such security.

Coupons issued in respect of a security are exempt from stamp duty as if attached thereto.

(2.) *As to Stock Certificates.*

XX. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock

Conversion into nominal debenture stock of stock in certificate to bearer.

(b) The Local Government Board have, by an order dated 27th February, 1875, prescribed a form of return under this section. The order will be found in "Glen's Local Government Orders," p. 327.

Appendix. shall become nominal debenture stock, and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

XXI. [*Trustee not to apply for stock certificate to bearer.*](a)

(3.) *As to Execution and Supply of Securities.*

Execution
and supply
of securities.

XXII. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4.) *As to Register of Nominal Securities.*

Register of
nominal
securities.

XXIII. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

- (1.) The names and addresses and the description of the owners for the time being of every such security, with a statement of the securities held by each person registered, and—
- (2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

Inspection
of register.

XXIV. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification
of register.

XXV. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court, for the purposes of this section, means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be

(a) This section was repealed by section 51 of the Trustee Act, 1893 (56 & 57 Vict. c. 53). See now section 7 of that Act, enacting that a trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts (*inter alia*) the Local Loans Act, 1875, but nothing in this section shall impose on the Bank of England or Ireland or on any person authorised to issue any such certificates any obligation to inquire whether a person applying for such certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted.

transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

Appendix.

(5.) *As to Loans under Official Sanction.*

XXVI. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorise the issue of such securities under official sanction. Permissive issue of securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are, as to form and otherwise, in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars ; (that is to say,)

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property ; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority ;

and such statement shall be evidence of the particulars therein stated.

(6.) *As to Investments on Loans under Act.*

XXVII. [Power for trustees to invest in loans under Act.](b)

XXVIII. When the Public Works Loan Commissioners are authorised to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates of other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan. Power for Public Works Loan Commissioners to take securities under Act.

(7.) *As to General Rules.*

XXIX. The general rules in the schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act. Application of rules in schedule.

XXX. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters : Power to make general rules.

(b) This section was repealed by section 51 of the Trustee Act, 1893 (56 & 57 Vict. c. 53). See now section 4 (3) of that Act, enacting that a trustee having power to invest money in debentures or debenture stock, of any railway, or other company, may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debenture stock issued under the Local Loans Act, 1875.

Appendix.

- (1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act ; and
- (2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan, the date of which is prior to the date of such making, addition, rescission, or alteration.

(8.) As to Borrowing.

Borrowing and re-borrowing by local authorities.

XXXI. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorised to borrow. (a)

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act ; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(9.) As to Forgery and Loss of Securities.

Forgery of securities.

XXXII. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Loss of securities.

XXXIII. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid, or destroyed.

(10.) Definitions.

Definitions.

XXXIV. For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorizing a local authority to borrow money :

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority : (b)

"Municipal borough" means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Acts amending the same : (c)

(a) It is to be observed that this Act regulates the mode of borrowing and the securities to be given, but it does not itself authorise borrowing in any particular case or cases.

(b) See note (c), *ante*, p. 1018.

(c) Now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). See section 242 of that Act.

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly :

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise :

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act :

"Person" includes a body of persons corporate or unincorporate :

"Executors and administrators" includes successors.

Appendix.

(11.) *Repeal and Consequential Enactment.*

XXXV.(d)

XXXVI. The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act, shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name.

Incorporation
of county
authority or
purposes of
Act.

SCHEDULE.

GENERAL RULES.

Transfer of Nominal Securities.

(1.) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them.

(2.) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by a local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3.) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

Transmission of Nominal Securities.

(4.) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognized by the local authority as having any title to such security.

(5.) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

(6.) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered transferee of such security.

(7.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

Appendix.

(8.) The instrument of transfer shall be presented to the local authority accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9.) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

THE PUBLIC WORKS LOANS ACT, 1875.

(38 & 39 VICT. CAP. 89.)(a)

An Act to consolidate with Amendments the Acts relating to Loans for Public Works.

[13th August, 1875.]

* * * * *

Preliminary.

Short title. I. This Act may be cited as "The Public Works Loans Act, 1875."

II. [*Commencement of Act.*]

Extent of Act. III. This Act shall extend to the Isle of Man.

Public Works Loan Commissioners.

Constitution,
&c., of Public
Works Loan
Commissioners.

IV. For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act and of any enactment passed or hereafter to be passed authorising or referring to such loans, there shall be a body of commissioners (in this Act referred to as the Loan Commissioners), who may be styled the Public Works Loan Commissioners.

Every person who may from time to time be appointed by Act of Parliament a Public Works Loan Commissioner shall, on signing the declaration in the Second Schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act.(b)

The Public Works Loan Commissioners shall hold office during such period as may be authorized by any Act appointing them, and if no period is so authorized, during the period of five years after the passing of such Act, and, if at the expiration of such period successors have not been appointed, may continue to hold office until successors be appointed, subject to this qualification, that they shall not grant any new loan after the expiration of such period.

Whenever any vacancy among the commissioners occurs by any commissioner dying or declining to act, or declining further to act, the remaining commissioners or a majority of them may by writing under their hands and seals, with the concurrence of the Treasury, appoint such person to fill the vacancy as seems fit, and the person so appointed shall, on signing the declaration in the Second Schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act, and shall hold office for the period during which the commissioner in whose place he is appointed would have held office.

A Public Works Loan Commissioner shall not receive any salary, fee, or emolument in respect of his services as such commissioner.

(a) The clause of enactment and section 2 of this Act are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). See the Public Health Act, 1875, ss. 233—244, *ante*, p. 314. See also the amending Acts, 39 & 40 Vict. c. 31; 41 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62; 46 & 47 Vict. c. 42; 50 & 51 Vict. c. 37; 51 & 52 Vict. c. 39. The other Acts relating to Public Works Loans, 43 & 44 Vict. c. 1; 47 & 48 Vict. c. 49; 48 & 49 Vict. c. 55; 49 & 50 Vict. c. 55; 52 & 53 Vict. c. 71; 53 & 54 Vict. c. 50; 54 & 55 Vict. c. 59; 56 & 57 Vict. cc. 24, 40; 57 & 58 Vict. c. 11; 59 Vict. c. 2, are not included in this Appendix, as they relate only to the appointment of commissioners, or to the grant of money by Parliament for the purposes of loans, or to particular loans.

(b) The names of the present commissioners will be found in 59 Vict. c. 2, s. 1.

V With respect to the Loan Commissioners the following provisions shall have effect : Appendix.

- (1.) The Loan Commissioners may sue and be sued in the name of their secretary for the time being ; and no action or suit in law or equity brought or commenced by or against the said commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said commissioners ; but the secretary to the said commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit as the case may be ; and
- (2.) The commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration ; and
- (3.) The Loan Commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the commissioners either before or after the passing of this Act, and the execution of the duties of the Loan Commissioners, and such other particulars as the Loan Commissioners may from time to time think fit :

Such particulars shall include a statement of any difference that may have arisen between the Loan Commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the Loan Commissioners :

Such report shall be transmitted to the Treasury within two months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament ; and

- (4.) Any minute made of proceedings at meetings of the commissioners, if signed by any person purporting to be the chairman, either of the meeting of the commissioners at which such proceedings took place, or of the next ensuing meeting of the commissioners, shall be receivable in evidence in all legal proceedings, without further proof, and until the contrary is proved every meeting of the commissioners, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act ; and
- (5.) An act or proceeding of the commissioners shall not be questioned on account of any vacancy or vacancies in their body.

VI. The Loan Commissioners may from time to time appoint or employ a secretary, solicitor, civil engineer, surveyor, and such number of officers, clerks, messengers, and other persons as they may, with the consent of the Treasury, deem necessary, and may remove any person so appointed or employed. Officers and their salaries and expenses.

The Loan Commissioners may from time to time assign to any person so appointed or employed by them such salary or remuneration as they may, with the sanction of the Treasury, think proper.

A person appointed or employed by the Loan Commissioners, in pursuance of this section, shall not receive any remuneration in respect of such appointment or employment or otherwise in respect of the execution of his duties under this Act, except such as may be assigned to him in pursuance of this section.

Every such salary or remuneration, and all expenses incurred by the Loan Commissioners in the execution of this Act, shall be paid out of moneys provided by Parliament.

VII. Where under this or any other Act or any conveyance, obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the Loan Commissioners from the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as often as the same happens and the appointment Securities given to and property vested in secretary to vest in his successor.

Powers, &c., of commissioners.

Appendix.

of a successor takes place, shall (subject to the same trusts, and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act and without any act or deed whatever to be done by the secretary dying, resigning, or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them, or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary, dying, resigning, or removed.

Where the secretary of the Loan Commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the commissioners shall be deemed to represent the Crown, so far as regards the interest of the Crown in any loan granted under this Act, or any money due under a security for any such loan, and it shall not be necessary to make the Crown, or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid.

Execution of conveyances, leases, &c., by secretary on behalf of commissioners.

VIII. All conveyances, leases, mortgages, releases, arrangements, and things which the Loan Commissioners are authorised by this Act to grant, execute, make, or concur in, and all powers, acts, and things which the Loan Commissioners are authorised by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the commissioners, unless the contrary is shown by some person interested in contesting the validity thereof.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exercisable by the secretary of the commissioners in pursuance of this Act, shall be dealt with and exercised by him under the direction of the commissioners and not otherwise.

Objects, Terms, and Duration of Loans.

Loans for public works.

IX. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the First Schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose.^(a)

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money having regard to the amount of money placed at their disposal by Parliament.^(b)

Interest on loan.

X. Every loan granted under this Act shall bear interest at a rate not less than the rate authorised by a special Act relating to such loan,^(c) or if no rate be so authorised, not less than five per cent. per annum; provided that when the aggregate amount of principal moneys due by any harbour authority to the com-

(a) The schedule includes all, or nearly all, the purposes for which a sanitary authority may borrow money. As to the amount of loan which may be made in one year, see 42 & 43 Vict. c. 77, s. 3, *post*.

(b) The commissioners may, on the application of a local authority and with the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by the Public Health Act, 1875. See section 243 of that Act, *ante*, p. 323.

(c) See the Public Health Act, 1875, s. 243, and the notes thereto. See also the Housing of the Working Classes Act, 1890, s. 83, *ante*, p. 652. In the application of the above section to loans granted after 28th June, 1892, 4 per cent. is to be read instead of 5 per cent. See 55 & 56 Vict. c. 61, s. 2, *post*.

missioners under "The Harbours and Passing Tolls, &c., Act, 1861," exceeds one hundred thousand pounds, the rate of interest on such excess shall be three-and-a-half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury, be necessary to enable the loan to be made without loss to the Exchequer.

Appendix.

XI. Every loan granted under this Act shall be made repayable by instalment (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised not exceeding twenty years. Term of years for repayment of loan.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may, either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners. (d)

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period shall be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

XII. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorised by the special Act relating to the loan, or if none is so authorised, of a mortgage of property or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security. Security for loans.

The Loan Commissioners may, if they think fit, dispense with personal security in any case in which, in their opinion, the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

Funds for Loans.

XIII.(e)

XIV.(f)

XV.

The annuities created in pursuance of this section, and the principal moneys borrowed in pursuance of this section (otherwise than by the issue of Exchequer bonds) and all interest from time to time due thereon, or on Exchequer bonds issued under this section (not exceeding the rate of five per cent. per annum) shall be charged upon and be payable out of the Consolidated Fund, or out of the growing produce thereof, at such times in each year as may be fixed by the Treasury.

The principal of any Exchequer bonds issued under this section shall be paid out of moneys provided by Parliament.

The said annuities shall, in manner directed by the warrant, be consolidated in the said books, if terminable, with annuities payable at the same date, and, if permanent, with annuities at the same rate of interest, and payable at the same date, and shall be

(d) See note (c), *supra*.

(e) This section is repealed by 45 & 46 Vict. c. 62, s. 9, *post*.

(f) This section and part of section 15 were repealed by the National Debt and Local Loans Act, 1887 (50 & 51 Vict. c. 16).

Appendix.

transferable in the said books in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

XVI.(a)*Recovery of Loans.*

Charge on property and priority of loan by the commissioners.

XVIII. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the commissioners and secured by a mortgage of the property executed to a person who is entitled as a *bonâ fide* creditor to the repayment thereof with interest.

Provided that if there is more than one such creditor and not less than four-fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act, (b) and no rule of law or custom shall affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act.

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

XIX. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

XX. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the commissioners on their behalf. Every such security is in this Act referred to as a security given to the commissioners.

Taking possession by commissioners of property on default of payment.

XXI. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things; namely,

- (1.) Take possession of the mortgaged property, or any part thereof; and
- (2.) Grant any lease of the mortgaged property, or any part thereof, for such term, and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and
- (3.) Sell or mortgage the mortgaged property, or any part thereof.

(a) Sections 16 and 17 were repealed by the National Debt and Local Loans Act, 1887 (50 & 51 Vict. c. 16).

(b) The special Act includes any Act relating to any person having power to borrow from the commissioners. 39 & 40 Vict. c. 31, s. 7.

XXII. The Loan Commissioners, when authorised to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,—

Appendix.

Powers of commissioners when in possession.

- (1.) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exercisable by the mortgagor or any person claiming through or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same, shall become vested in the secretary of the commissioners; and
- (2.) The commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in their secretary by this Act; and
- (3.) The commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the commissioners may think expedient; and
- (4.) The commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest(c) from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage; and
- (5.) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorise the purchaser with the like consent to destroy the same, and sell or authorise the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the commissioners, nor their secretary, nor the purchaser so authorised, nor his representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction; and the provisions of this Act with respect to the sale of any mortgaged property shall apply to any sale under this section; and
- (6.) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the taking of possession became vested in the secretary of the commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom the same would have been vested if possession had not been taken, but the commissioners may, if they think fit, on the relinquishment of possession, reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them;
- (7.) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act.

XXIII. Where a loan made by the commissioners is secured by the mortgage of a rate (whether with or without any other security), and the commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the commissioners shall have and may exercise the same power

Powers in relation to rate where default made.

(c) Not less than 5 per cent. 44 & 45 Vict. c. 38, s. 7, *post*.

Appendix.

as the mortgagor of making and levying the rate mortgaged, and for that purpose the commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor.

The commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the commissioners shall be paid by them to the mortgagor.

The commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revert in the mortgagor, subject to the said reservations and conditions.

Liability of commissioners after taking possession or in default of payment.

XXIV. When the Loan Commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands.

Sale and mortgage by commissioners of mortgaged premises.

XXV. Where the Loan Commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the commissioners may think proper.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the Loan Commissioners may, if they think fit, sell in such manner and subject to such conditions, stipulations, and agreements as they may think expedient for the purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof, with a view to the public good or general benefit, or for any other purpose, notwithstanding such conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property.

The Loan Commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

Purchaser not liable to see to the validity of sale or application of money.

XXVI. Every sale or mortgage made by the commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorised, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire.

The receipt in writing of the Bank of England, or one of their cashiers or other proper officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable in any manner accountable for the misapplication or non-application thereof.

Terms of lease, sale, or mortgage.

XXVII. Any lease, mortgage, conveyance, (a) or other disposition made by the secretary of the commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the

(a) See the definition of a conveyance in section 51, *post*.

Loan Commissioners, or their secretary either before or after possession taken, and the same shall thereupon be vested in and may be exercised and put in force by such person accordingly.

Appendix.

Nothing in this Act shall operate to invalidate or affect the rights of any person entitled *bond fide* to any debt, estate, or interest, having priority over or ranking *pari passu* with the loan granted by the commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the commissioners.

XXVIII. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act, by or under the direction of the Loan Commissioners of any mortgaged property, shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the commissioners in respect thereof, or otherwise by reason of the default in payment, and, secondly, in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage.

Application of money arising on taking possession, sale, mortgage, &c., by commissioners.

The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or if the commissioners think fit, shall be paid by the secretary of the commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

XXIX. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged property or rate to the person paying the same, or as he may direct, upon such terms and conditions and in such manner and form as the commissioners may think expedient.

Payment of loan before it is due, and transfer of security for all or part of loan.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the commissioners by the conveyance.

The commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

XXX. Upon all money due under a mortgage under this Act being fully paid the commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act shall (unless the commissioners, on the request and at the expense of the person paying the said money make any other disposition thereof) revert in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the commissioners.

Discharge of security and vesting of property on repayment of loan.

XXXI. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to, the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for payment thereof or part thereof has not arrived, unless in the case of a surety the commissioners think fit to accept some other surety.

Bankruptcy of debtor.

Appendix.

Form of mortgage.

XXXII. Every security given under this Act may be in such form as may be prescribed,^(a) and the fact of the secretary of the Loan Commissioners being a party thereto shall be conclusive evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act.

Recovery of debt on personal security.

XXXIII. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of Her Majesty, her heirs and successors, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine; but no person shall be liable for any larger sum than that which he is expressed to be bound to pay.

Every sum payable in respect of a loan granted by the Loan Commissioners (either being or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case.^(b)

The Loan Commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the Loan Commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an immediate writ of extent, or of *diem clausit extremum*, to issue without any writ of *scire facias* or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the Loan Commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

Recovery of loan after the expiration of term for repayment.

XXXIV. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan.^(c)

Supplemental Provisions as to Loans and Securities.

Security for completion of works partly finished or not commenced.

XXXV. Where the commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to Her Majesty or otherwise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest of the public.

Examination as to proper application of moneys lent.

XXXVI. Where the Loan Commissioners advance any loan for any purpose on the security of a rate it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such

(a) See the definition in section 51, *post*.

(b) The commissioners may reduce the interest on any loan made before this Act to any rate not less than 4 per cent., but this provision is not to take away or abridge the power of the commissioners to reduce the interest on any loan under the Public Health Act, 1875, s. 243 (*ante*, p. 323), (39 & 40 Vict. c. 31, s. 6), *post*.

(c) This provision appears to meet a difficulty such as occurred in *Reg. v. Wigan*, *ante*, p. 318.

examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor.(d) **Appendix.**

XXXVII. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorise. Suspension of payment of principal and interest.

XXXVIII. The Loan Commissioners may, subject to the prescribed regulations, if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan. Change of security.

XXXIX. The Loan Commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure. Concurrence by commissioners in leases, sales, &c., of mortgaged property.

Special provisions as to Borrowers.

XL. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices' room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act. Power to various authorities to mortgage and levy rates.

The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices' room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act.(e)

The said justices and council respectively(e) shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct.

Miscellaneous.

XLI. The Loan Commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings Regulations by commissioners.(f)

(d) This section is amended by 41 Vict. c. 18, s. 4, *post*, and 44 & 45 Vict. c. 38, ss. 8, 9, *post*. For the powers of a poor law inspector, see 4 & 5 Will. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21.

(e) This paragraph and the words "and council respectively," are repealed as to boroughs within the Municipal Corporations Act, 1882. See Schedule I., Part 2 of that Act.

(f) Regulations have been made under this section, and are as follows:—

1. All words used in these regulations shall have the same meaning as is assigned to them by the "Public Works Loans Act, 1875," which Act is hereinafter referred to as "the Act."

2. The Loan Commissioners shall elect a chairman and deputy chairman; and three commissioners shall form a quorum.

3. If at any meeting the chairman is not present, the deputy chairman shall be the chairman of the meeting, and if neither the chairman nor deputy chairman be present, then the commissioners present shall choose one of their number to be the chairman of such meeting.

Appendix. of the Commissioners and the authentication of documents made or issued or directions given or acts done by them, and with respect to loans under this Act and appli-

4. Meetings of the commissioners shall be held as often as the business to be transacted may be found to require, and shall be convened by notice from the secretary.

5. All questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

6. A book, to be called the minute book, shall be kept, in which applications for loans and minutes of the proceedings and resolutions of the Commissioners shall be recorded and such other books shall be kept as the commissioners may think necessary.

* * * * *

8. When the Loan Commissioners shall have determined upon any amount of money to be advanced by way of loan, pursuant to section 9 of the Act, the said commissioners, or any three or more of them, shall forthwith certify such amount to the Commissioners for the Reduction of the National Debt for the time being, and at the foot of every such certificate the secretary shall state the name or names of the person or persons by whom every such certificate is to be presented to the said Commissioners for the Reduction of the National Debt, and upon every such certificate being lodged for seven clear days at the office of the said Commissioners for the Reduction of the National Debt, the Comptroller-General or other proper officer of the said Commissioners shall sign an order appended to such certificate for the payment of the sum mentioned therein to the person or persons named at the foot of the certificate or to one of such persons, which order shall be addressed to the cashier of the Governor and Company of the Bank of England; and the signature of such person or persons, jointly or severally, shall be a sufficient discharge to the said Commissioners for the Reduction of the National Debt, and to the said governor and company respectively, provided the total amount directed to be paid by such certificate or certificates respectively shall not at any time exceed the amount for the time being standing to the credit of the account referred to in section 16 of the Act.

9. Upon delivery to the borrower or his nominee of the certificate referred to in the last preceding regulation, such borrower or nominee shall pay at the office of the Loan Commissioners the amount of the fees referred to in Regulation No. 7 as payable on any loan or instalment of a loan for which such certificate shall have been issued, together with the amount of stamp duty thereon, and the further amount, if any, of disbursements in respect thereof; and the receipt for any such amounts shall be signed by the officer in charge of the accounts, or in his absence by such person as may be nominated by the secretary.

10. All moneys payable towards the discharge of advances made by the Loan Commissioners and in payment of interest thereon, shall be paid by the borrower or his agent into the Bank of England to the credit of "The Public Works Loans Account," being the account directed by the Treasury under section 43, and such payments shall be made under authority to be obtained at the office of the Loan Commissioners empowering the Bank of England to receive the sum therein mentioned, and the receipt of the Bank of England for such payment shall be obtained at the office of the Loan Commissioners on the succeeding day.

11. Any receipt required to be given by or on behalf of the Loan Commissioners (other than for money paid into the Bank of England under Regulation No. 10, and for sums payable under Regulation No. 9), and any receipt and further discharge, if any, to be given when all money due under a mortgage has been fully paid, shall be so given by the secretary.

12. Any notice required by section 23 of the Act to be published shall be published once in a local paper circulating in the district where the rate is intended to be levied.

13. All documents of the Loan Commissioners not required to be signed by them shall, if purporting to be signed by the secretary, be deemed, until the contrary is proved, to be made or issued by the Loan Commissioners; and all directions given or acts done by the secretary shall be deemed, until the contrary is proved, to be given or done by the Loan Commissioners; and all documents may be proved by the production of a copy or extract purporting to be signed by the secretary to be true.

For the purposes of this regulation no proof shall be required of the handwriting or official position of the person purporting to be the secretary.

14. The Loan Commissioners, regard being had to section 36 of the Act, shall, whenever they advance a loan on the security of a rate, inform the Local Government Board of such advance having been made, and of the purposes thereof.

15. The Loan Commissioners shall cause to be prepared an annual statement to the 31st of March in each year of the amounts issued to them, for the purpose of making advances by way of loan under various Acts, the amounts advanced by them, the amounts paid into the Exchequer in repayment of such advances and for interest thereon, and the balances outstanding, and such statement shall be included in the annual report referred to in section 5, sub-section 3.

16. To enable intending borrowers to make the statement referred to in section 13 of the Act, the Loan Commissioners shall cause a form of statement to be prepared and issued to

cations therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the Appendix.

such intending borrowers on their written notification of intention to borrow, which form, duly filled up, must be returned to the Loan Commissioners on or before the 31st December in each year.

The Loan Commissioners may, provided such notification be received at their office on or before the said 31st December, extend the period for return of such form of statement to any day not later than the 14th January in each year.

17. The assistant secretary of the Loan Commissioners shall, under their directions be competent to perform any act authorised by the above regulations to be performed by the secretary.

Public Works Loans Board,
1st April, 1876.

W. W. WILLINK,
Secretary.

The Lords Commissioners of Her Majesty's Treasury approve these regulations, in conformity with the 41st section of the Act, 38 & 39 Vict. c. 89.

13th April, 1876.

R. R. W. LINGEN.

FURTHER REGULATIONS MADE BY THE PUBLIC WORKS LOAN COMMISSIONERS UNDER THE PUBLIC WORKS LOANS ACT, 1875.

1. All certificates which shall be given by the Loan Commissioners pursuant to the 8th of the regulations made on the 1st day of April, 1876, under the Public Works Loans Act, 1875, for advances which are intended to be made out of moneys provided by the Commissioners for the Reduction of the National Debt under the powers contained in the Public Works Loans Act, 1879, shall be lodged at the office of the last-mentioned Commissioners for such number of days as may from time to time be agreed upon between the same Commissioners and the Loan Commissioners, anything contained in the said regulation to the contrary notwithstanding.

2. For the purpose of making payments to the Commissioners for the Reduction of the National Debt on account of principal or interest in respect of moneys advanced by them to the Loan Commissioners under the Public Works Loans Act, 1879, the Bank of England shall transfer, in accordance with section 7 of the said Act, from the Public Works Loans Account to the credit of the National Debt Commissioners at the Bank of England such sums as may from time to time be directed by the Loan Commissioners, and every such direction shall be signed by their secretary or assistant secretary.

Public Works Loans Board,
18th December, 1879.

W. W. WILLINK,
Secretary.

The Lords Commissioners of Her Majesty's Treasury approve of these regulations in conformity with the 41st section of the Act, 38 & 39 Vict. c. 89.

Treasury Chambers,
2nd January, 1880.

R. R. W. LINGEN.

FURTHER REGULATIONS MADE BY THE PUBLIC WORKS LOAN COMMISSIONERS FOR CARRYING INTO EFFECT "THE PUBLIC WORKS LOANS ACT, 1875."

1. The fees or sums to be paid by the applicants pursuant to section 41 of the Public Works Loans Act, 1875, in respect of loans on rates, shall not exceed the following sums, viz. :—

On loans not exceeding 2,000*l.*, 1*l.* 1*s.* for every 100*l.* of such loan.

On loans exceeding 2,000*l.* and not exceeding 25,000*l.*, 21*l.*, plus 2*s.* 6*d.* for every 100*l.* by which such loan exceeds the sum of 2,000*l.*

On loans exceeding 25,000*l.*, 50*l.*

Where a loan is advanced by instalments, secured by one deed, there shall be paid in respect of each advance after the first, an additional fee of 1*l.* 1*s.* for every 100*l.* of such advance, but not exceeding 3*l.* 3*s.*

For the purpose of this regulation the total amount to be advanced under one security deed shall be considered as a loan; and fractional parts of 100*l.* shall be considered as 100*l.*

In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees, and other disbursements incurred by the Loan Commissioners in respect of the several applications.

In respect of all business not being a loan on rates, the fees or sums payable shall be fixed by the Commissioners, regard being had to each particular case.

2. The above regulation shall come into force on the 1st day of February, 1882, and as from such date the Regulation No. 7 of the regulations made by the Public Works Loan Commissioners on the 1st day of April, 1879, shall be rescinded.

Public Works Loans Board,
19th January, 1882.

(Signed) E. R. SPEARMAN.

Appendix. applicants, and with respect to the forms to be used, including the forms of the securities, and with respect to any fees or sums to be paid by the applicants or by other persons dealing with such commissioners, and with respect to the relations between such commissioners and the National Debt Commissioners and the Bank of England.

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they think fit, shall be published in the *London Gazette*, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section shall, after the expiration of six months after its publication in the *London Gazette*, be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

XLII.(a)

Accounts,

XLIII. The Loan Commissioners shall keep at the Bank of England such account, and under such title as the Treasury may from time to time direct, and every such account shall be deemed to be a public account.

Such accounts as the Treasury may from time to time direct of all moneys issued from or payable to the Consolidated Fund in pursuance of this Act during every financial year, and of all transactions under this Act during that year, including all sums due for the time being from any person in respect of any loan granted by the Loan Commissioners either before or after the passing of this Act, shall be kept by the National Debt Commissioners and the Loan Commissioners respectively, and such other persons (if any), and be audited by the Comptroller and Auditor-General in such manner as the Treasury may from time to time direct.

Perjury.

XLIV. Any person who, when examined by the Loan Commissioners in pursuance of this Act, or any regulation made under this Act, wilfully gives false evidence, or who, for the purpose of obtaining a loan under this Act, wilfully gives information to such commissioners which is false in any material particular, shall be guilty of perjury.

Authority, and
laying before
Parliament
Treasury
warrants.

XLV. The warrant of the Treasury issued under the authority of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed to be done for the purposes of this Act, and copies of any such warrant relating to the borrowing of money shall be laid before both Houses of Parliament, within one month of the date thereof, if Parliament be then sitting, and if not, within one month after the then next meeting of Parliament.

Receipt for
money payable
on account of
loan, &c.

XLVI. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted under this Act, or of any sum due under any security made under this Act or otherwise payable to, or by the direction of, the Loan Commissioners or their secretary, shall be a complete discharge to the person paying the same.

Notices may be
served by post.

XLVII. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall

The Lords Commissioners of Her Majesty's Treasury approve these regulations, in conformity with the 41st section of the Act, 38 & 39 Vict. c. 89.

Treasury Chambers,

25th January, 1882.

(Signed) R. R. W. LINGEN.

(a) Repealed by the Statute Law Revision Act, 1883

be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post.

Appendix.

XLVIII. Notices and documents required by this Act, or by any regulation made under this Act, to be served on the Loan Commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the commissioners.

Notices to
and by commis-
sioners.

Notices and documents required for the purposes of this Act, or of any regulation made thereunder, to be served by or on the Loan Commissioners, or to be made or issued by the Loan Commissioners, shall be in writing or in print, or partly in writing and partly in print.

XLIX. The schedules to this Act shall be construed and have effect as part of this Act.

Effect
of schedule.

L. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in such special Act (b) and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act, and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act ; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act.

Application of
Act to loans
under special
Acts.

LI. In this Act, if not inconsistent with the context—

The expression “person” includes a body of persons, whether corporate or unincorporate : (c)

Definitions.

* * * * *

The expression “financial year” means the year ending the thirty-first day of March :

The expression “prescribed” means prescribed by the regulations made under this Act with the approval of the Treasury :

The expression “special Act” means any Act passed before the passing of this Act which authorises the Loan Commissioners to lend money for the purposes of any work mentioned in the First Schedule to this Act and any Act passed after the passing of this Act, which authorises the Loan Commissioners to lend money for any purpose : (b)

The expression “security” includes a mortgage :

The expression “mortgage” includes a charge and any instrument in the nature of a mortgage or charge, and in Scotland any heritable security :

The expression “conveyance” includes any grant, assignment, transfer, or other disposition or assurance ; and the expression “convey” shall be construed accordingly :

The expression “rate” means a rate, cess, or assessment, the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levy of a rate includes the issue and enforcement of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly :

Any toll, due, rent, imposition, and other sum not being a rate as above defined shall be deemed to be property for the purposes of this Act.

(b) As to the meaning of this term see section 18, note (b), *ante*, p. 1032.

(c) Several definitions are here repealed by the Statute Law Revision (No. 2) Act, 1893 (36 & 37 Vict. c. 54).

Appendix. All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors, heirs, executors, administrators, and assigns of, or other persons claiming through or under such mortgagor or borrower.

LII.(a)

LIII.(b)

LIV.(a)

Reference in Acts to repealed Acts. LV. A reference in any Act to any enactment hereby repealed, or to the commissioners for the execution of any Act hereby repealed, shall, so far as is consistent with the tenor thereof, be deemed to refer to the corresponding enactment in this Act and to the Public Works Loan Commissioners under this Act.

Saving for loans and transactions under repealed Acts. LVI. Save as otherwise provided by this Act this Act shall apply only to loans granted and securities made after the commencement of this Act.
The Loan Commissioners shall have the same power of making further advances on any mortgage made before the commencement of this Act and intended to secure more than the sum which has actually been advanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The Loan Commissioners, on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing, may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the Loan Commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners, secretary, and officers as the commissioners, secretary, and officers under the Acts in pursuance of which such loan was granted and securities made, and all securities and documents relating to such commissioners, secretary, and officers shall be construed accordingly.

Repeal of Acts. LVII.(c) So much of any . . . enactment as authorises any loan by the Public Works Loan Commissioners for the purpose of any work other than a work mentioned in the First Schedule to this Act, or as is otherwise inconsistent with this Act is hereby repealed

Provided that—

(1.) The repeal of an enactment by this Act shall not affect—

* * * * *

(b.) Any power to make or levy rates, or any other power capable of being exercised for the purpose of enabling or compelling the repayment of any money due on account of any loan granted by the Public Works Loan Commissioners before the commencement of this Act, whether the same or any part thereof has been actually advanced before or after such commencement

* * * * *

(a) Repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).
(b) Repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).
(c) This section is printed with the omission of parts repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54), and the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

SCHEDULES.

FIRST SCHEDULE.(d)

Works for the purpose of which the Commissioners may lend Money.

- Baths and wash-houses provided by local authorities.
 Burial grounds provided by burial boards
 Conservation or improvement of rivers or main drainage.(e)
 Docks.
 Harbours and piers, and any work for which the Public Works Loan Commis-^{24 & 25 Vict.}
 sioners are authorised to lend by section 3 of the Harbours and Passing Tolls, &c.,^{c. 47.}
 Act, 1861.
 Improvement of towns.
 Labourers' dwellings.
 Lighthouses, floating and other lights for the guidance of ships, buoys, and
 beacons.
 Lunatic asylums of any county or borough in Great Britain
 Police stations and justices' rooms of any county or borough in Great Britain and
 the offices connected therewith
 Prisons.
 Public libraries and museums.
 Any schoolhouse or work for which a school board is authorised to borrow under
 the Elementary Education Acts, 1870 and 1873, or any Act amending the same . . .^{33 & 34 Vict.}
 Waterworks established or carried on by a sanitary or other local authority.^{c. 70.}
 Workhouses or poorhouses, and any work for which guardians of the poor . . .^{36 & 37 Vict.}
 are authorised to borrow under the general Acts relating to the relief of the poor.^{c. 86.}
 Any work for which a sanitary authority are authorised to borrow under the Public^{35 & 36 Vict.}
 Health Act, 1875.^{c. 62.}
 * * * * *
- Any work for which the commissioners are authorised to lend by any Act passed
 after the passing of this Act.(f)

SECOND SCHEDULE.

Form of Declaration.

I, A. B., do hereby declare that according to the best of my judgment I will faithfully and impartially execute the powers and duties of a Public Works Loan Commissioner according to law.(g)

* * * * *

(d) Parts of this Schedule relating to Scotland only are omitted.

(e) This includes works of underground drainage. See the Public Works Loans Act, 1894 (57 & 58 Vict. c. 11), s. 3.

(f) See, for example, the Housing of the Working Classes Act, 1890, s. 67, *ante*, p. 646.

(g) The Third Schedule was repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

Appendix.

THE PUBLIC WORKS LOANS ACT, 1876.

(39 & 40 VICT. CAP. 31.)(a)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners, and to amend the Public Works Loans Act, 1875. [24th July, 1876.]

* * * * *

Preliminary.

- Short title. I. This Act may be cited as the Public Works Loans (Money) Act, 1876.
- II.(b)
- III.(c)

Amendment to Public Works Loans Act, 1875.

IV. AND V.(b)

Explanation of 38 & 39 Vict. c. 89, s. 33, as to reduction of interest on loans to sanitary authorities, VI.(b) Nothing in the Public Works Loans Act, 1875, shall be deemed to take away or abridge the power of the Loan Commissioners under section two hundred and forty-three of the Public Health Act, 1875 to reduce, if they think fit, any interest payable on any such loan to a local authority as is in those sections mentioned.

Explanation of ss. 18, 50, of 38 & 39 Vict. c. 89. VII.(b) Sections eighteen and fifty of the Public Works Loans Act, 1875,(d) shall be construed as if "special Act" in those sections included any Act relating to any person having power to borrow money from the Public Works Loan Commissioners.

VIII.(c)

THE COMMONS ACT, 1876.

(39 & 40 VICT. CAP. 56.)(e)

An Act for facilitating the Regulation and Improvement of Commons, and for amending the Acts relating to the Inclosure of Commons. [11th August, 1876.]

* * * * *

- Short title. I. This Act may be cited for all purposes as the Commons Act, 1876.

(a) The preamble to this Act was repealed by the Statute Law Revision Act, 1894, and by section 4 of that Act it was enacted that in any revised edition of the statutes published by authority the clause of enactment may be omitted. It is accordingly omitted here and in every subsequent Act in this Appendix.

As to the subject of this Act, see also 38 & 39 Vict. c. 89, *ante*, p. 1028 ; also 39 & 40 Vict. c. 31 ; 41 Vict. c. 18 ; 42 & 43 Vict. c. 77 ; 44 & 45 Vict. c. 38 ; 45 & 46 Vict. c. 62 ; 46 & 47 Vict. c. 42 ; 55 & 56 Vict. c. 61, *post*.

(b) Sections 2, 4, 5, and parts of sections 6 and 7 here omitted were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). In section 6 certain words relating to Scotland only are also omitted.

(c) This section was repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(d) See the sections referred to, *ante*, pp. 1032, 1041.

(e) The preamble to this Act reciting the Inclosure Acts, 1845 to 1868, was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). As to the recited Acts, see section 37, and the Schedule, *post*. The powers and duties of the Inclosure Commissioners were by 45 & 46 Vict. c. 38, s. 48, transferred to the Land Commissioners, and by 52 & 53 Vict. c. 30, s. 2, the powers and duties of the latter were transferred to the Board of Agriculture. Throughout this Act, therefore, it is necessary to substitute the Board of Agriculture for the Inclosure Commissioners.

This Act confers on urban sanitary authorities important powers and duties with respect to suburban commons.

PART I.

LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS.

Applications in relation to Commons.

II. The Inclosure Commissioners^(f) may entertain an application made in manner in this Act mentioned for a provisional order—

(1.) For the regulation of a common; or

(2.) For the inclosure of a common or parts of a common.

Further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the provisional order.

The commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the application represent at least one-third in value of such interests in the common as are proposed to be affected by the provisional order.

III. A provisional order for the regulation of a common may provide, generally or otherwise, for the adjustment of rights in respect of such common, and for the improvement of such common, or for either of such purposes, or for any of the things by this Act comprised under the expression "adjustment of rights" or "improvement of a common," or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the provisional order by Parliament.

IV. The adjustment of rights in respect of a common comprises for the purposes of this Act all or any of the following things:—

(1.) As respects rights of common of pasture in a common, being waste of land of a manor, the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised;

(2.) As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition, of all or any of such rights which may permanently injure the common;(g)

(3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights, which may be injurious to the general body of the commoners or to the proper cultivation of the land;

(4.) As respects any common whether it is or is not waste land of a manor, the determination of the rights and obligations of the lord of the manor, severally

Alternative provisional order for regulation or inclosure or commons.

"Regulation of common" includes adjustment of rights and improvement.

Explanation of adjustment of rights.

(f) Now the Board of Agriculture. See note (e), *ante*, p. 1044. The consent of the Board is also necessary to an inclosure or approvement under the Statute of Merton and the Statute of Westminster the Second, or either of such statutes. 56 & 57 Vict. c. 57, s. 1. Nothing in the Copyhold Act, 1894, authorises a lord to enclose any common or waste land. 57 & 58 Vict. c. 46, s. 95.

(g) Where under an Inclosure Act (42 Geo. 3, c. xliii., s. 13), part of a waste was allotted to the lord in trust for the cottagers as a turf common, and subsequently a railway company took part of this turf common, it was held that the lord was entitled to so much of the fund in court as represented the value of the soil. *Attorney-General v. Meyrick* [1893], A. C. 1; 62 L. J. Ch. 313; 68 L. T. (N.S.) 174; 57 J. P. 212.

Appendix.

owners, or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land ; and

- (5.) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

Explanation of improvement.

V. The improvement of a common comprises for the purposes of this Act all or any of the following things ; (that is to say,)

- (1.) The draining, manuring, or levelling the common ; and
- (2.) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common ; and
- (3.) The making or causing to be made bye-laws and regulations for the prevention of or protection from nuisances or for keeping order on the common ; and
- (4.) The general management of such a common.
- (5.) The appointment from time to time of conservators of the common for the purposes aforesaid.

Meaning of provisional order for inclosure of commons.

VI. A provisional order for the inclosure of a common means a provisional order for enclosing the common as provided by the Inclosure Acts, 1845 to 1868, as amended by this Act.

Provisions for the benefit of a neighbourhood applicable alike to orders for regulation and orders for inclosure.

VII. In any provisional order in relation to a common, the Inclosure Commissioners^(a) shall, in considering the expediency of the application, take into consideration^(b) the question whether such application will be for the benefit of the neighbourhood, and shall, with a view to such benefit, insert in any such order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case ; (that is to say,)

- (1.) That free access is to be secured to any particular points of view ; and
- (2.) That particular trees or objects of historical interest are to be preserved ; and
- (3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common ; and
- (4.) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious ; and
- (5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

Suburban Commons.

Sanitary authorities to be represented in the case of commons in the neighbourhood of towns.

VIII. Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns, or within six miles of any town or towns (which common so situate is in this Act referred to as a suburban common) shall be served as soon as may be on the urban sanitary authority or authorities having jurisdiction over such town or towns, and it shall be lawful for the urban sanitary authority of any such town to appear before the assistant commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the

(a) Now the Board of Agriculture. See note (e), *ante*, p. 1044.

(b) The Board of Agriculture are required to have regard to the same considerations in giving their consent to an inclosure or approvement under the Statute of Merton and the Statute of Westminster the Second, or either of those statutes. 56 & 57 Vict. c. 57, s. 3.

Inclosure Commissioners,^(a) and to make to him or them, at any time during the proceedings in relation to obtaining a provisional order under this Act, such representations as they may think fit with respect to the expediency or in expediency of such application, regard being had to the health, comfort, and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

An urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners,^(a) enter into an undertaking to contribute out of the funds for or towards the maintenance of recreation grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

An urban sanitary authority may acquire by gift and hold without license in mortmain on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners,^(a) in pursuance of this Act, and any rights in such a common.^(c)

They may also in the case of any such suburban common purchase and hold as aforesaid, with a view to prevent the extinction of the rights of common, any saleable rights of common or any tenement of a commoner having annexed thereto rights of common.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the provisional order, make an application to the Inclosure Commissioners for the regulation of such common with a view to the benefit of their town and the improvement of such a common.

Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common, such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood, as well as to private interests, be invested with such powers of management or other powers as may be expedient.

The expenses incurred by an urban sanitary authority in pursuance of this section may be defrayed out of any rate applicable to the payment of expenses incurred by such authority in the execution of the Public Health Act, 1875,^(d) and not otherwise provided for.

A town for the purposes of this section means any municipal borough, or Improvement Act district, or Local Government district, having a population of not less than five thousand inhabitants.

The population of any town for the purposes of this Act shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance.

Procedure.

IX. The Inclosure Commissioners^(a) shall from time to time, upon application made by the persons interested in any common,^(e) issue in such form as they may

Issue of forms
by commis-
sioners.

(c) This power is extended to the Metropolitan Board of Works by 41 & 42 Vict. c. 71. The powers of the Board are now transferred to the London County Council by the Local Government Act, 1888 (52 & 53 Vict. c. 41), s. 40.

(d) *Ante*, p. 276.

(e) Application may now also be made by parish councils. See 56 & 57 Vict. c. 73,

Appendix. deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1868, as amended by this Act are to be made to the commissioners, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners.(a)

Rules as to application to commissioners.

X. The following rules shall be observed with respect to an application to the Inclosure Commissioners(a) for a provisional order for the regulation or inclosure of a common ; (that is to say,)

Publication of notices of application.

(1.) The applicants previously to making their application shall publish, in such manner as the Inclosure Commissioners(a) may, from time to time, by general or special order direct, an advertisement giving notice of their intention to apply for such provisional order, and shall also serve a like notice on any urban sanitary authority entitled under this Act to receive such notice : Provided that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates :

Manner of application.

(2.) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustment of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form, and be made in such manner as the Inclosure Commissioners(a) may from time to time direct :

Evidence to be furnished in support of application.

(3.) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners, in answer to questions previously submitted or otherwise in such manner as the said commissioners may from time to time direct, with information bearing on the expediency of the application considered in relation to the benefit of the neighbourhood, as well as to private interests :

Evidence in relation to benefit of neighbourhood.

(4.) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following ; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate ; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages ; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood ; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood ; and in the case of a common being waste land of a manor, as to the site, extent, and suitableness of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes ; and as to any other matter which in the judgment of the Inclosure Commissioners(a) may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and, if acceded to, as to what statutory provisions as defined by this Act, ought to be inserted in the provisional order for the benefit of the neighbourhood :

The Inclosure Commissioners(a) shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood :

s. 8 (1) (c). And that section also provides that notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate. 56 & 57 Vict. c. 73, s. 8 (3).

(a) Now the Board of Agriculture. See note (e), *ante*, p. 1044.

(5.) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following; that is to say, as to the extent and nature of the common to which the application relates; as to the mines, minerals, or valuable strata (if any) under the same; as to the questions of boundary (if any) concerning such common, or such mines, minerals, or strata; as to the parties interested in such common, and the numbers and proportion in value of interest who have consented to or dissented from the application; as to the nature of the rights requiring the intervention of the Inclosure Commissioners^(a) or the interference of Parliament; as to the supposed advantages of the application being acceded to; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the provisional order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected; and as to any other matter which in the judgment of the Inclosure Commissioners^(a) may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions ought to be inserted in the provisional order for the protection of private interests:

Appendix.

Evidence in relation to private interests.

(6.) The Inclosure Commissioners^(a) shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an assistant commissioner, that a *prima facie* case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local inquiry to be held by an assistant commissioner.

Duty of commissioners on application.

XI. The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners:—^(a)

Rules as to local inquiry.

(1.) The assistant commissioner appointed to hold such inquiry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common: Provided always, that one at least of such public meetings shall be held in the evening, between the hours of seven and ten of the clock.

Inspection and public meeting.

(2.) The assistant commissioner shall give not less than twenty-one days' notice of his intention to hold the first of such meetings.

Notice of meeting.

(3.) The notice shall, in such form, as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one, and held for the purpose of enabling the assistant commissioner to hear all persons desirous of being heard on the subject matter of the application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject matter of the inquiry.

Contents of notice.

(4.) The notice shall be given—

Publication of notice.

(a.) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate; and

(b.) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room, the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are usually posted; and

(c.) By advertising in such manner as the Inclosure Commissioners may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.

(5.) The assistant commissioner shall preside and regulate the proceedings at such meetings, and shall hear all persons desirous of being heard in relation to

Conduct of meeting.

Appendix.

Personal
inquiries by
assistant
commissioner.

Report of
assistant com-
missioner to
Inclosure Com-
missioners.

Map to accom-
pany report.

Rules as to
provisional
orders.

Draft pro-
visional order
to be framed.

Provisions for
benefit of
neighbourhood.

Provisions
for protection
of private
interests.

the subject matter of the inquiry. He may adjourn any such meeting from time to time, or from place to place, on giving such notice of adjournment as he thinks best calculated to ensure publicity.

- (6.) The assistant commissioner shall also make any inquiries and do any other acts which he may be instructed by the Inclosure Commissioners^(a) or may think it advisable to do, for the purpose of enabling the commissioners to judge as to the expediency of making the provisional order applied for, also as to the nature of the provisions to be inserted in any such provisional order if made.
- (7.) The assistant commissioner shall report in writing to the Inclosure Commissioners the result of the local inquiry, and of the public meeting or meetings held by him (in such form and with such details as the Inclosure Commissioners^(a) may from time to time direct), and specially shall report to the Inclosure Commissioners the information obtained by him as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the Inclosure Commissioners.^(a)

He shall also report the number of persons who attended the meetings held by him, the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted in the provisional order for the benefit of the neighbourhood or for the protection of private interests, and any other circumstances which he may think expedient, with a view to enable the Inclosure Commissioners^(a) to judge of the expediency of making the provisional order, having regard as aforesaid, and also if the order be made of the provisions to be inserted therein.

- (8.) The report shall be accompanied by an outline or other map on such scale and of such a description as may be directed by the Inclosure Commissioners,^(a) with a sketch in the case of an inclosure of a common being waste of land of a manor, of the allotments (if any) proposed to be made, for recreation grounds and field gardens, or for either of such purposes.

XII. The following rules shall be observed with respect to provisional orders to be made by the Inclosure Commissioners ;^(a) (that is to say,) ^(b)

- (1.) The Inclosure Commissioners,^(a) if satisfied by the report of the assistant commissioner or by further inquiries to be made by themselves or an assistant commissioner, that, having regard to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, shall frame, in such form and with such provisions as they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of provisional order applied for, a draft provisional order for the consideration of the persons interested in the common, specifying, if such application is for the regulation of a common, whether all or any one or more of the provisions of this Act for the adjustment of rights and the improvement of a common are to be put in force :
- (2.) With respect to provisions for the benefit of the neighbourhood, there shall be inserted in such draft provisional order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case ; also, if the order is an inclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and field gardens :
- (3.) With respect to private interests, there shall be inserted in such draft provisional order (1) where the interests of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a

(a) Now the Board of Agriculture. See note (e), *ante*, p. 1044.

(b) In addition to these provisions the board may insert in the order a provision for the raising and payment of expenses of and incidental to the regulation of the common, either wholly or partly, by a sale of a portion of the common, specifying the situation and maximum quantity sold ; the expenses to be raised and paid in manner provided by the Inclosure Acts, 1845 to 1868. 41 & 42 Vict. c. 56, s. 2. They may also specify in any provisional order for the regulation of a common, as one of the terms and conditions of the regulation, the appropriation of an allotment for the neighbouring poor, in which case the provisions of the Inclosure Acts, 1845 to 1876, as to allotments made on enclosure of a common, are to apply. *Ib.* s. 4.

statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts, 1845 to 1868, or as may appear to the Inclosure Commissioners(a) proper to be inserted; also, if there are any other rights which appear to the commissioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf:

Appendix.

- (4.) As soon as may be after making their draft provisional order, the Inclosure Commissioners(a) shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order that the same may be considered by the parties interested therein, and they shall give notice, in such manner as they think best calculated to secure publicity, of such deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto:
- Deposit of draft order for consideration of parties interested.
- (5.) The Inclosure Commissioners(a) shall not certify the expediency of a draft provisional order unless they are satisfied that persons representing at least two-thirds in value of such interests in the common as are affected by the order consent thereto; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his manor, then unless there is more than one person interested in such manor according to the definition of the Inclosure Act, 1845, the commissioners shall not certify the expediency of the same, unless the person interested in the common in right of such manor, or his substitute under the said Inclosure Act, 1845, consent to such order; and where there is more than one person interested in such manor the commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the commissioners:
- Consents before provisional order certified to be expedient.
- (6.) Where the freemen, burgesses, or inhabitant householders of any city, borough, or town are entitled to rights of common or other interest in the common to which the draft provisional order relates, the Inclosure Commissioners(a) shall not certify the expediency of such order unless it appears to the commissioners that two-thirds in number of such of the freemen and burgesses so entitled as may be resident in such city, borough, or town, or within seven miles thereof, or of such inhabitant householders, as the case may be, have consented to the order; and in case two-thirds in number of such resident freemen and burgesses, or of such inhabitant householders, have so consented, such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled.
- Reservation in favour of freemen interested in common.
- (7.) The Inclosure Commissioners(a) may cause a meeting or meetings to be held by an assistant commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interests of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:
- Means of obtaining consents.
- (8.) The Inclosure Commissioners(a) may at any time before certifying the expediency of a draft provisional order, modify the same, of their own mere notion, or on the suggestion of any parties interested, but such modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft provisional order originally deposited by the commissioners:
- Power to modify provisional order before expediency certified.
- (9.) When the necessary consents have been obtained to any draft provisional order as originally deposited, or as modified in pursuance of this Act, such order shall be deemed to be final; and the Inclosure Commissioners(a) shall in a report or reports to be made from time to time, as respects each provisional order which has become final as aforesaid, certify that it is expedient that such provisional order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each provisional order, they shall, in such manner as they think best adapted to enable Parliament to judge of the expediency of such order, state the information furnished to them as to the several particulars in respect of which
- Certificate of expediency of provisional order.

Appendix.

Confirmation
of provisional
order.

the applicants for a provisional order are by this Act required to furnish information to the commissioners ; also the result of the local inquiry, and of the number and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the commissioners may think it expedient to state for such purposes as aforesaid :

- (10.) Every report made by the Inclosure Commissioners^(a) certifying the expediency of any provisional order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any order for the regulation or inclosure of a common, the expediency of which has been so certified by the commissioners, shall be confirmed, the regulation or inclosure of any common to which any such order relates shall be proceeded with and completed according to the terms of the provisional order relating to such common, and to the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a provisional order, until such Act of Parliament as aforesaid has been passed in relation thereto, shall not be of any validity whatever :

Supplemental
power to modify
provisional
order after
expediency
certified.

- (11.) If, after the presentation to Parliament of a report, made by the Inclosure Commissioners^(a) certifying the expediency of any provisional order for the regulation or inclosure of a common, and before a bill has been brought in for the confirmation of such order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such provisional order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the provisional order accordingly, but such modifications shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft provisional order originally deposited by the commissioners :

And it shall be the duty of the commissioners^(a) to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the commissioners shall make a special report to the effect that the order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament ; and thereupon the order so modified shall be deemed to be in the same position in all respects as if it were an order in respect of which a report had been made by the commissioners certifying the expediency thereof, and such report had been presented to Parliament.

Partial applica-
tion of pro-
cedure under
Inclosure Acts.

XIII. The Inclosure Commissioners^(a) may insert in any provisional order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such order into effect ; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed instead of being regulated, and the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, shall apply accordingly.

Power to raise
money for
improvement
of common.

XIV. A provisional order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the commissioners^(a) think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common.^(b)

^(a) Now the Board of Agriculture. See note ^(e), *ante*, p. 1044.

^(b) The provisional order must specify the situation and maximum quantity so sold. The proceeds may, if the order so provides, be invested, and the income applied towards the

Supplementary Provisions.

Appendix.

XV. The majority in value of the owners of stints or rights of pasture in any regulated pasture created under the provisions of the General Inclosure Act, 1845, in addition to the powers they now possess, are hereby authorised at any annual meeting for the election of field reeves to make bye-laws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management, occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such bye-laws. Owners may make bye-laws.

XVI. Any bye-law made in pursuance of this Act, and any alteration made therein, and any revocation of a bye-law, shall not be of any validity until it has been confirmed by one of Her Majesty's principal Secretaries of State. Provision as to bye-laws.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such bye-laws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of forty shillings.(c)

XVII. No such confirmation shall take place unless notice of the intention to apply therefor, stating the effect of this section, has been published by the conservators one month at least before the application. Notice of application for confirmation of bye-laws.

During one month at least before the application a copy of every bye-law, the making, alteration, or revocation, of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such bye-law open for inspection by persons interested, and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding one shilling for each copy.

XVIII. Subject to the terms of the provisional order the amount of any compensation to be paid for any restriction, modification, or abolition of rights in pursuance of an order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly. Provision as to certain expenses under order for regulation of a common.

XIX. Whereas by several awards made under the authority of Inclosure Acts, prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments : Definition of power of Charity Commissioners in certain cases.

And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons :

And whereas power exists or is claimed under divers Acts of Parliament to divert such allotments from the uses declared by Parliament respecting the same : Be it enacted, that . . . notwithstanding anything in any other Act contained, it shall not be lawful (save as hereinafter mentioned) to authorise the use of or to use

improvement or protection of the common ; and the order may also provide for the sale of all or part of the investment and the application of the proceeds for the like purpose. 41 & 42 Vict. c. 56, s. 3.

(c) M. had premises adjoining a common regulated by bye-laws under this Act, and at such premises she let ponies for hire. M. at her premises let ponies to be used by two persons on the common, and they used them there. It was held that this was no offence against a bye-law which forbade the letting for hire of ponies on the common. *Marcy v. Morris*, 52 J. P. 168. Where a local improvement Act authorises conservators of a common to make bye-laws for the prevention of and protection from nuisances and for keeping order, N. was charged with placing a boat-van for pleasure on the common contrary to the bye-laws without a license and without payment of the prescribed fee. It was held that the bye-law was not *ultra vires* merely because it prohibited vans being brought on the common without leave without expressly confining such prohibition to cases amounting to nuisances. *Nash v. Manning*, 58 J. P. 718. In *Scott v. Baring*, 11 T. L. R. 175, a person was convicted of a contravention of a bye-law against digging loam, &c., made by the conservators of a common under the provisions of a local Act. He set up a claim of right under the authority of the lord of the manor, but it was contended that the question had been already decided in *Robertson v. Hartopp*, 43 Ch. D. 484, that the lord of the manor had no right to dig loam on the common, and that, therefore, the claim of right was unreasonable. And it was held on appeal that the conviction was wrong on the ground that the justices could not decide the question without going into the question of right.

Appendix.

any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided, that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorise the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of "The Charitable Trusts Act, 1862," for the establishment of a scheme for the administration of such fuel allotment accordingly; and provided, that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorise the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out, if the commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained.

Gravel digging.

XX. Where any common is regulated pursuant to this Act by a provisional order of the Inclosure Commissioners(a) confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of "The Metropolitan Commons Act, 1866," or "The Metropolitan Commons Amendment Act, 1869," or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the Highway Acts, or trustees of any turnpike road, shall search for, dig, get, or carry away gravel, sand, stone, or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient.

PART II.

AMENDMENT OF THE INCLOSURE ACTS.

Field Gardens and Recreation Grounds.

Expenses of clearing, draining, and fencing field gardens.

XXI. Whereas it is expedient that the expense of clearing any allotments made for field gardens may be included in the expenses of an inclosure: Be it enacted that the valuer shall, unless the Inclosure Commissioners(a) otherwise direct, cause every allotment made for a field garden to be cleared, drained, fenced, levelled, and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

Substituted allotments for recreation grounds and field gardens.

XXII. The provisions of the Inclosure Acts, 1845 to 1868, which authorise the Inclosure Commissioners(a) to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any provisional order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

Situation of allotments for recreation grounds and field gardens.

XXIII. Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated, and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or

(a) Now the Board of Agriculture.

a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the commissioners may, in the provisional order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

Appendix.

XXIV. There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as relates to the charging of an allotment made for the purpose of a field garden with a rentcharge, and every such allotment made after the passing of this Act shall be made free of any such rentcharge.

Field gardens to be free of rentcharge.

XXV. [*Allotments for recreation grounds to be vested in churchwardens and overseers.*](b)

XXVI.(c) Allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same or any unlet portion thereof, in gardens not exceeding an acre each, to such inhabitants as aforesaid : Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithe rentcharge, and the rentcharge charged on the said allotments under the provisions of "The General Inclosure Act, 1845," but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

Amendment of law as to letting field gardens.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector or vicar and churchwardens, overseers, managers, or any other person or persons whatever and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens.(d)

XXVII.(e) The surplus rents arising from recreation grounds shall be applied to all or any of the following purposes, and to no other purpose ; that is to say, in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood ;(e) and the surplus rents arising from field gardens shall be applied to all or any of the following purposes, and to no other purpose ; that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

Application of surplus rents of recreation grounds and field gardens.

(b) Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). As to the holding and management of allotments whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants by the parish council instead of by the overseers, see section 6 (1) (iii.) of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

(c) The recital of certain provisions of the Inclosure Act, 1845, at the commencement of this section, and section 27 with certain consequential parts of section 27, were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(d) In parishes where there is a parish council the powers and duties of allotment wardens are now exercised and performed by the parish council. 56 & 57 Vict. c. 63, s. 6 (3).

(e) And also to the improving of any of the field gardens to which this section applies, in the same parish or neighbourhood, or maintaining the drainage and fencing thereof. 42 & 43 Vict. c. 37, s. 2.

Appendix.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners,^(a) sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood : Provided that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others ; and provided that the Inclosure Commissioners^(a) shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased ; and the proceeds of any such sale shall be paid to the Inclosure Commissioners^(a) and shall remain in their hands until such purchase of other land as aforesaid.

Reports to be made by managers of recreation grounds and field gardens.

XXVIII. The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens^(b) shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners^(a) direct, make such reports to the said commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the commissioners may require.

Amendment of law as to town and village greens.

XXIX.^(c) An encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the said Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.^(d)

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

Jurisdiction of county court in respect of illegal inclosures.

XXX.^(e) A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875.

The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

^(a) Now the Board of Agriculture. See note ^(e), *ante*, p. 1044.

^(b) See note ^(d) on preceding page.

^(c) The recital of the Inclosure Act, 1857, as to town and village greens was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

^(d) The 20 & 21 Vict. c. 31, s. 12, provides a summary remedy for injury or damage to the fences of or for other nuisances to a village green. The penalty for each offence is forty shillings which with the damage is recoverable summarily before justices. Under that section, however, the proceedings could only be instituted by a churchwarden or overseer, or the person in whom the soil was vested.

^(e) Sections 30 and 31 are extended to metropolitan commons by 41 & 42 Vict. c. 71, s. 3.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common. Appendix.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

XXXI. Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor.

Three months' notice of claim to inclose to be given in the local papers.

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

XXXII. An appointment of a valuer . . . shall not be valid until it has been confirmed by the commissioners.(a) The commissioners(a) may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed subject to the approval of the commissioners(a) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the commissioners is appointed.

Appointment of valuer to be confirmed by commissioners.

General Amendment.

XXXIII. The provisions of section one hundred and five of the Inclosure Act, 1845, relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange, partition, and division of intermixed lands carried into effect in pursuance of the Inclosure Acts, 1845 to 1868, by separate orders, and not included in an award of inclosure.

Extension of section 105 of the Inclosure Act, 1845, as to exchanges and partitions.

PART III.

Miscellaneous.

XXXIV. *There shall be repealed so much of section thirty of the Inclosure Act, 1845, as prescribes a limit to the quantity of land to be allotted to recreation grounds; also the twenty-fourth, twenty-fifth, twenty-sixth, and twenty-seventh sections of the Inclosure Act, 1845, and (f) the Inclosure Commissioners(a) shall not be required to repeat, in their general annual report, any of the particulars in relation to the regulation or inclosure of commons which they may have stated in any other reports made by them in pursuance of this Act in relation to such commons, but they may refer to such other reports, or give a summary thereof, or otherwise deal with the same as may be thought expedient.*

Repeal of certain parts of the Inclosure Act, 1845, and amendment of law as to reports.

XXXV. This Act, save as herein expressly provided, shall not apply to any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 and 1869.

Act not apply to metropolitan commons.

XXXVI. Where an Act of Parliament has been passed confirming a provisional order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

A common regulated under Act not to be inclosed without sanction of Parliament.

(f) This section was repealed down to this point by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

Appendix.

Definitions.

Definitions.

XXXVII. In this Act, unless the context otherwise requires,—

“A common” means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868 :*(a)*

“Waste land of a manor” means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number or stints :

“Person” includes a body corporate :*(b)*

* * * * *

“Municipal borough” means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the regulation of municipal corporations in England and Wales,” and the Acts amending the same :*(c)*

“Improvement Act district” means any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town :

“Local government district” has the same meaning as it has in the Public Health Act, 1875.*(d)*

* * * * *

THE RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 VICT. CAP. 75.)

*An Act for making further Provision for the Prevention of the Pollution of Rivers.**(e)*
[15th August, 1876.]

* * * * *

Short title
of Act.

I. This Act may be cited for all purposes as “The Rivers Pollution Prevention Act, 1876.”*(f)*

PART I.

*Law as to Solid Matters.*Prohibition
as to putting
solid matters
into streams.

II. Every person*(g)* who puts, or causes to be put, or to fall or knowingly permits*(h)* to be put, or to fall or to be carried into any stream,*(i)* so as either

(a) See section 4, *ante*, p. 1045.

(b) The definition of “Inclosure Acts, 1845 to 1868,” and the schedule to this Act to which that definition referred, are repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See now the Short Titles Act, 1892 (55 & 56 Vict. c. 10).

(c) Now the Municipal Corporations Act, 1882; see section 242 of that Act.

(d) See section 4 of that Act, *ante*, p. 4.

(e) The provisions of the Act exceed this title inasmuch as they not only provide against the pollution of rivers, but also against their obstruction by the placing of solid matters therein. The preamble to this Act was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.

(f) Sanitary authorities will derive considerable assistance in construing this Act from the circular of the Local Government Board issued 6th August, 1877, and set out at p. 481, of “Glen’s Local Government Orders.”

(g) Note that the definition in section 20, *post*, extends this word to any body of persons corporate or unincorporate. Hence associations, or companies, or partners may be answerable as well as individuals.

(h) In *Hipkins v. Birmingham and Staffordshire Gas Light Company*, 5 H. & N. 74; 6 H. & N. 250, the word “suffer,” which has much the same signification as permit, was held to apply to involuntary omission to prevent. Here there was a limitation, as, by this section, the permission must be with knowledge which implies will, but see now 56 & 57 Vict. c. 31, *post*.

(i) See the definition in section 20, *post*.

singly or in combination(*k*) with other similar acts of the same, or any other person . **Appendix.**
to interfere with its due(*l*) flow, or to pollute(*m*) its waters, the solid refuse of any
manufactory, manufacturing process or quarry, (*n*) or any rubbish or cinders, or any
other waste(*o*) or any putrid solid matter, (*p*) shall be deemed to have committed an
offence(*q*) against this Act. (*r*)

In proving interference with the due flow of any stream, or in proving the pollu-
tion of any stream, evidence may be given of repeated acts which together cause such
interference or pollution, although each act taken by itself may not be sufficient for
that purpose. (*s*)

PART II.

Law as to Sewage Pollutions.

III. Every person(*t*) who causes to fall or flow, or knowingly permits(*u*) to fall or Prohibition
as to drainage
into streams
of sewers.

(*k*) It is not intended by this word to imply any conspiracy or joint action. It is
apparently intended to refer to simultaneous action : so that if one manufacturer cast his
refuse into the stream with little effect, yet if at the same time other manufacturers cast their
refuse therein, the mischief would arise and each would be responsible.

(*l*) These words require attention. The flow of a stream raises two considerations, first,
as to the velocity of the stream ; secondly as to its course or channel. The velocity and the
channel must not be impeded. That is, the stream must not be made to run slower, neither
must it be diverted from its proper channel. The word *due* signifies its natural flow. In
the case of a pure undisturbed stream the natural flow would be ascertained easily, but the
case will be different where a stream has long been the subject of impediment. Does the
statute contemplate the existing state of things, prohibiting any further impediment, or does
it refer back to the original state of the stream and require the original flow to be restored
and kept up ? This latter alternative will generally be so impracticable that the former
seems the preferable construction.

(*m*) See in section 20, *post*, what is not polluting. It will be remembered that section 68 of
the Public Health Act, 1875, *ante*, p. 94, provides for the pollution of water by gas washings.

It appears from the cases of *Filbey v. Coombe*, 2 M. & W. 677, and *Law v. Dodd*, 1
Exch. 845, that the refuse of a manufactory is that which the manufacturer himself
contemplates as rubbish.

(*n*) Section 4, *post*, provides for mines.

(*o*) Does this word waste apply to the following word matter ? Apparently not.

(*p*) See in section 20, *post*, the limitation to be put upon the words "solid matter."

(*q*) Although this section creates this offence the statute does not make the commission
criminal so as to render the party subject to any penalty. It is provided that the county
court may restrain the continuance of the offence, and make an order, and if such order be
disobeyed the offender will be liable to a penalty ; but this is all.

Where a statute prohibits an act and provides no penalty the person who commits the act
is liable to be indicted for a common law misdemeanor, but the rule cannot be held to apply
here as the statute contains a remedy.

The acts mentioned in the section when committed in navigable rivers will generally be
such nuisances as will subject the person committing them to prosecutions for nuisances,
and such prosecutions may still be instituted though they afford but indifferent remedies,
and are generally very costly.

(*r*) Reference must be made to section 17, *post*, which prevents the Act from applying
to the lawful exercise of any rights of impounding or diverting water.

Thus, in *Smith v. Barnham*, 34 L. T. (N.S.) 775, a local Act having prohibited persons
from wilfully throwing rubbish into a stream, the Court of Appeal were disposed to hold
that where a person exercised a right claimed by many years' enjoyment to cast the
refuse of a tannery into the stream, he was not to be considered as wilfully easting
rubbish therein within the operation of the clause. The point was not, however, distinctly
decided.

(*s*) This would be lawful in prosecutions for nuisances.

(*t*) See the definition in section 20. A sanitary authority may be brought within the
operation of this section.

(*u*) See note (*h*) on section 2, *ante*. And note that now by 56 & 57 Vict. c. 31, *post*, it is
enacted that where any sewage matter falls or flows or is carried into any stream after passing
through or along a channel which is vested in a sanitary authority, the sanitary authority
shall, for the purposes of section 3 of the Rivers Pollution Prevention Act, 1876, be deemed
to knowingly permit the sewage matter so to fall, flow, or be carried.

Two local sanitary authorities appointed a joint drainage committee consisting of members
from each board, and gave to such joint committee the exclusive control and management of

Appendix. flow, or to be carried into any stream, (a) any solid or liquid sewage matter, (b) shall (subject as in this Act mentioned) (c) be deemed to have committed an offence against this Act. (d)

Where any sewage matter falls, or flows, or is carried into any stream along a channel used, constructed, or in process of construction, at the date of the passing of this Act for the purpose of conveying such sewage matter, the person (d) causing or

the sewage and sewage works, and henceforward the disposal and treatment of the sewage of both districts were carried out under the control of the said committee. The sewage works continued to remain the property of the local board to which the said works belonged prior to the appointment of the said joint committee. Sewage or other offensive or injurious matter was allowed to flow from the said sewage works into an adjoining river, thereby polluting it. The conservancy board thereupon served a notice in writing upon the local board to which the sewage works belonged to discontinue the flow of sewage matter into the river. The local board having failed to comply with the terms of the notice, were summoned before the magistrates to compel them to discontinue the nuisance, or to render them liable to the penalty for not doing so. It was held that the local board were not liable as they had ceased to have the control over the sewers, and so could not have "caused" or "suffered" the out-flow into the river. *Lea Conservancy Board v. Tottenham Local Board*, 64 L. T. (N.S.) 198; 55 J. P. 343.

The plaintiffs, under section 10 of this Act, *post*, applied to a county court for and obtained an order to restrain the defendants from causing the sewage to flow into the stream. On appeal against this order it appeared to the court that, upon the facts of the case, the plaintiffs were themselves in default in not having made any provision for dealing with the sewage in these sewers, as required by the Public Health Act, 1875. It was held that the making of the order was discretionary, and although the defendants had offended against this Act, as a matter of discretion, under the circumstances of the case, an order ought not to be made against them at the instance of the plaintiffs, who were themselves offenders against this Act and were seeking to avoid performance of their duty under the Public Health Act, 1875. It was held also that an appeal on the above-mentioned ground was correctly brought by way of motion. *Kirkheaton District Local Board v. Ainley and Co.* [1892], 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. (N.S.) 209; 41 W. R. 99; 8 T. L. R. 663.

The conservators of the river T. having indicted the local board of S., as the urban sanitary authority, for having in contravention of section 63 of the Thames Navigation Act, 1866, "caused, or, without lawful excuse, suffered" sewage matter to flow into the river T. within their district, in connection with which certain points of law were necessarily involved, it was held that the proper course to follow was to take a special verdict, prepared by both sides from the jury, after formal evidence of the matters alleged in the special verdict had been given, and the points of law arising therein, should be subsequently discussed in the Court for Crown Cases Reserved. *Reg. v. Staines Local Board*, 52 J. P. 215.

A local board under the Public Health Act, 1875, have only a qualified property in the sewers within their district, and cannot prevent persons who have acquired a prescriptive right to use them from so doing, unless they provide other sewers equally effectual. Where a local board have not themselves constructed sewers which are a nuisance, but only permitted them to be used by inhabitants who have acquired a prescriptive right to use them, the local board do not "cause or suffer" sewage to flow into the Thames within the meaning of section 64 of the Thames Navigation Act, 1866, and cannot be convicted of a misdemeanor under that Act. *Reg. v. Staines Local Board*, 60 L. T. (N.S.) 261; 53 J. P. 358; 5 T. L. R. 25.

(a) See the definition in section 20, *post*, where it will be seen how far sewers draining into the sea or tidal waters are affected by those enactments.

(b) What is sewage matter? There is no definition in this Act nor in the Public Health Act, 1875, nor elsewhere. It appears to be properly the matter which is contained in a sewer. Now, in *Sutton v. Mayor, &c., of Norwich*, 31 L. T. 389, KINDERSLEY, V.C., observed that "in the common sense of the term a sewer means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality." Hence sewage matter appears to be feculent matter, and this is supported by the 17th section of the Public Health Act, 1875, *ante*, p. 40, where the words used are sewage and filthy water.

It will be observed that it is not necessary to prove that any injurious effect has followed from the act referred to.

The occupier of any premises will be answerable for the acts of his household, if he knowingly permits the sewage to fall into the stream, and this knowledge will be readily presumed from the state of the premises.

(c) See the restrictions on the proceedings in section 13, *post*. The saving in section 17 can have no operation upon the section. Hence no prescriptive right or license under grant will be available against this statutory prohibition.

(d) Here also no penalty is imposed, but the application must be made to the county court

knowingly permitting the sewage matter so to fall or flow, or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case^(e) that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.^(f)

Appendix.

Where the Local Government Board are satisfied after local inquiry^(g) that further time ought to be granted to any sanitary authority,^(h) which at the date of the passing of this Act is discharging sewage matter into any stream,⁽ⁱ⁾ or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed⁽ⁱ⁾ by the Local Government Board, subject to such conditions, if any, as they see fit.

A person, other than a sanitary authority, shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream^(k) along a drain^(l) communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.^(m)

to prevent the continuance of the offence. It must be noticed, however, that the person who thus acts may be liable to prosecution under the Public Health Act, 1875, s. 91, *ante*, p. 108, and thereby rendered liable to a penalty.

^(e) He cannot have the benefit of this provision until he is taken before the court, but he will be entitled to notice of the intended proceedings under section 13, *post*.

^(f) The county court judge must consider whether this is the fact or not, and it is not sufficient to hold merely that nothing has been done to aggravate the nuisance. *Yorkshire (West Riding) County Council v. Holmfirth Local Board* [1894], 2 Q. B. 842; 63 L. J. Q. B. 485; 71 L. T. 217; 59 J. P. 213; 9 R. 462. A certificate from the inspector, under section 12, will prove this fact. In an appeal under this Act, the case stated that a sanitary authority was and had been, for a long period before the passing of the Act, sending a large quantity of sewage into a watercourse which joined a larger stream, the water in which above the junction was available for most primary purposes, and that the combined stream fell into the sea three miles below the junction. The effect of this flow of sewage was, that in the summer months the greater part of the contents of the combined stream was foully polluted. The case, while it contained the statement that the combined stream had been for more than forty years carrying more or less polluted matter to the sea, also stated that the pollution had been largely increased within the last twenty years. It was held that although the tributary stream was, at the date of the Act, "mainly used as a sewer" (see section 20, *post*), and was therefore exempted from the operation of the Act, the stream into which it flowed was not so used, and that therefore the pollution of the latter must be prevented. *Portobello (Magistrates of) v. Edinburgh (Magistrates of)*, 10 Ct. of Sess. Cas., 4th series, 130.

^(g) See the Public Health Act, 1875, Part IX., *ante*, p. 389, as to local inquiries of the Local Government Board.

^(h) See the definition of this term in section 20, *post*.

⁽ⁱ⁾ This section does not authorise the withdrawal or rescinding of the order. Hence probably the Board will generally make the order for a short period.

The order will be made upon application from the sanitary authority, who should apply in writing, on folio foolscap paper, addressed to the President of the Board, under cover directed to the Secretary. There should be a concise statement of the circumstances which induce the sanitary authority to make the application.

It will be seen by reference to section 13, that no proceedings can be taken under this Act until twelve months after its date, but nevertheless the application should be made without loss of time.

^(k) See the definition in section 20, *post*.

^(l) See the definition of a drain in the Public Health Act, 1875, s. 4, *ante*, p. 18.

^(m) It is presumed that those words have a retrospective operation and apply to the sanction given tacitly or actually to communications made before the Act, as well as to cases where drains are made hereafter to communicate with sewers. The sanitary authority will be responsible for the sewer itself. *Ferrand v. Hallas Land and Building Company*, *ante*, p. 33. See also note ^(u), *ante*, p. 1059, and the statute 56 & 57 Vict. c. 31, *post*.

It will be remembered that the communication of the drain with the sewer has often been the result of compulsion authorised by the statutes.

Appendix.

PART III.

Law as to Manufacturing and Mining Pollutions.

Prohibition
as to drainage
into streams
from manufac-
tories.

IV. Every person^(a) who causes to fall or flow or knowingly permits^(b) to fall or flow, or to be carried into any stream^(c) any poisonous, noxious, or polluting^(d) liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned)^(e) be deemed to have committed an offence against this Act.^(f)

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed^(g) in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act, if he shows^(h) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably⁽ⁱ⁾ available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Prohibition
as to drainage
into stream
from mines.

V. Every person^(k) who causes to fall or flow, or knowingly permits^(l) to fall or flow, or to be carried into any stream^(k) any solid matter from any mine in such quantities as to prejudicially^(m) interfere with its due flow, or any poisonous, noxious, or polluting⁽ⁿ⁾ solid or liquid matter proceeding from any mine,^(o) other than water in the same condition as that in which it has been drained or raised from such

^(a) See the definition in section 20, which includes bodies of persons as well as individuals.

^(b) See note ^(h) on section 2, *ante*, p. 1058.

^(c) See the definition in section 20, *post*.

^(d) These three words must have separate meanings; poisonous implies destruction to life, human or animal; noxious is lower in degree, and signifies some injury, but not of necessity immediately dangerous to life; polluting will include both the other qualities and also what is foul and offensive to the senses, except innocuous discolouration, as to which see section 20.

This section applies to a liquid only, as there is no reference here to the obstruction of the stream. See as to throwing cinders, &c., into streams, 53 & 54 Vict. c. 59, s. 47, *ante*, p. 592.

^(e) See section 13, *post*.

^(f) See note ^(g) on section 2, *ante*, p. 1059.

^(g) This channel may be constructed at any time hereafter; but it must be carefully noticed that the new channel must be a substantial one. No exemption is given to any other new channel.

^(h) See note ^(e) on section 3, *ante*, p. 1061.

⁽ⁱ⁾ This word is not in section 3. There is so much difficulty in dealing with these subjects that the manufacturer is not required to guarantee the absolute success of the means which he has adopted. He will be protected if he uses means which, in the judgment of skilled persons, may reasonably be expected to remove the mischief although they in fact do not do so.

^(k) See the definition in section 20, *post*.

^(l) See note ^(h) on section 2, *ante*, p. 1058.

^(m) It is to be observed that this word does not occur in section 2. What is its force here? Can the due flow of the stream be interfered with otherwise than prejudicially? In mining districts this may be the case. It may be of no importance that the course of the stream is slackened, or that the channel is widened or changed. Hence it will be necessary to prove some actual prejudice to individuals from the interference. See note ^(l) on section 2, *ante*, p. 1059, as to the due flow.

⁽ⁿ⁾ See note ^(d), *supra*, with reference to these words, and the limitation as to polluting in section 20, *post*.

In section 20 it is provided that solid matter shall not include particles of matter in suspension, but such matters would appear to fall under the term liquid matters, and if so, they would be within the provision of this section. See *United Alkali Company, Limited v. Simpson* [1894], 2 Q. B. 116; 63 L. J. M. C. 141; 42 W. R. 509; 58 J. P. 260*n*.

^(o) It must be noticed that section 2 applies to quarries. And the term mine applies to some underground work. This was the meaning given to the word in the decisions of the courts upon the rating of mines.

mine,^(p) shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows^(q) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably^(r) available means to render harmless the poisonous, noxious or polluting matter so falling or flowing, or carried into the stream.^(s)

Appendix.

VI. Unless and until Parliament otherwise provides^(t) the following enactments shall take effect:—

Restriction
on proceedings
under this part
of the Act.

Proceedings shall not be taken against any person under this part of this Act^(u) save by a sanitary authority,^(v) nor shall any such proceedings be taken without the consent of the Local Government Board:

Provided always, that if the sanitary authority, on the application of any person interested^(w) alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board,^(x) and if that Board on inquiry^(y) is of opinion that the sanitary authority should^(z) take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.^(aa)

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry,^(bb) unless they are

^(p) It will be immaterial how poisonous or polluted this water may be, so long as its original condition remains unchanged. If it come into contact with other substances in the mine which may affect its condition, the exemption will cease, and if in an altered state it flows into any stream with the knowledge and permission of the mine owner an offence will be committed.

^(q) See note ^(e) on section 3, *ante*, p. 1061.

^(r) See note ⁽ⁱ⁾ on p. 1062, *ante*.

^(s) Reference should be made to the saving in section 17, *post*.

^(t) These words indicate that this provision is of a tentative character, because future legislation could, of course, prevent the continuance of this enactment, and the words have in themselves no definite legal operation.

^(u) It must be noticed that this section is limited to the cases of manufacturing pollutions and mining obstructions and pollutions.

^(v) See the definition in section 20, *post*.

^(w) What will constitute an interest is a question of some nicety. A riparian owner or occupier will be interested, so also will an inhabitant who draws water from the polluted stream; and it seems that if the stream be polluted within the district, the complainant need not be an inhabitant, or a ratepayer within it. But is an inhabitant of the district, as such, a person interested? Seeing the effect of polluted streams upon the general health of a district, it will probably be held that he is.

If the object of the complainant is to obtain only a settlement of a disputed private right, the Local Government Board will doubtless refuse to interfere.

^(x) This application should be made on folio foolscap paper, addressed to the President of the Local Government Board under cover addressed to the Secretary. It should set forth the circumstances of the case, the applicant's interest, his complaint to the sanitary authority, and their refusal. It should also communicate reasonable means of proving the alleged offence.

^(y) The Public Health Act, 1875, Part IX., *ante*, p. 389, provides for the inquiries of the Local Government Board.

^(z) This implies that an offence has been committed, and that there is sufficient means of proving it. The sanitary authority are compellable to commence proceedings, but if they should refuse to do so, alleging and showing that they have not adequate means of prosecuting them with success, the High Court of Justice would probably refuse to enforce this direction.

The following part of this section shows that notwithstanding the direction of the Board the sanitary authority may, under certain circumstances, abstain from taking proceedings.

^(aa) This is only a guide to the board, pointing out how they are to exercise their discretion, but the direction is very vague.

^(bb) These are also words of much vagueness. How are the board to determine what is the seat of a manufacturing industry? And what is the definition of "a manufacturing industry?" This will be ascertained by reference to the subjects of this particular part of the Act. The industry will be such as produces the kind of pollutions here dealt with, and though only manufacturing industry is mentioned, doubtless mining industry falls within the meaning of this part of the section.

Appendix.

satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably^(a) practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.^(b)

Any person^(c) within such district as aforesaid,^(d) against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes.^(e)

The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses,^(f) and, after inquiry, such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken.

And where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities^(g) to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

PART IV.

ADMINISTRATION OF LAW.

Sanitary
authority to
afford facilities
for factories
draining into
sewers.

VII. Every sanitary or other^(h) local authority having sewers under their control shall⁽ⁱ⁾ give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers :

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view :^(k)

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements

(a) It will be noticed that this adverb is placed before "practicable," and, therefore, governs both adjectives, but probably the effect will be the same as in the last section, upon which see note (i) on p. 1062.

(b) This consideration will frequently cause much embarrassment to the Board. The materiality of the injury will be difficult to measure.

It seems to be intended that if material injury would be inflicted by the proceedings they are not to be allowed under any circumstances.

(c) See the definition in section 20, *post*.

(d) This district must be one which is the seat of a manufacturing industry.

(e) It is presumed that this provision applies to mines.

(f) No power is given to the sanitary authority to examine these witnesses on oath; but see 14 & 15 Vict. c. 99, s. 16, which probably confers the power of administering oaths to witnesses upon an enquiry such as this.

(g) This prohibition does not apply to persons aggrieved, because they cannot take proceedings under this part of the Act. See, however, section 13, *post*.

(h) *Quære*, who are here referred to? The Public Health Act, 1875, s. 13, *ante*, p. 32, exempts from the sewers of sanitary authorities sewers made under local or private Acts of Parliament, and such as are under the authority of Commissioners of Sewers. These are probably referred to.

(i) Though this word is peremptory, it is presumed that the authority must have some discretion in the matter. They will, doubtless, be entitled to require some payment for the facility, and to impose conditions and regulations as to the communications to be made with the sewers.

Moreover, it is only a liquid which is to be received. They cannot be required to receive any solid refuse, and should steadfastly refuse to do so.

(k) These words, though not such as are usually to be found in a statute, appear to mean injurious to health.

It may be well to refer to the case of *St. Helens Chemical Works v. St. Helens Corporation*, 1 Ex. D. 196; 45 L. J. M. C. 150; 34 L. T. (N.S.) 397; 40 J. P. 471. There

of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority. *(l)* **Appendix.**

VIII. Every sanitary authority *(m)* shall, subject to the restrictions in this Act contained, *(n)* have power to enforce the provisions of this Act in relation to any stream *(m)* being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority. *(o)* **Power of sanitary authority to enforce Act.**

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875. *(p)*

Proceedings may also, subject to the restrictions in this Act contained, *(q)* be instituted in respect of any offence against this Act by any person aggrieved *(r)* by the commission of such offence.

IX. The Conservancy Board constituted under the Lea Conservancy Act, 1868, *(s)* shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act. **Power of Lea Conservancy Board to enforce Act.**

The said Conservancy Board may also enforce the provisions of the Lea Conservancy Act, 1868, *(s)* under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1.) Legal Proceedings.

X. The county court having jurisdiction in the place *(t)* where any offence against **Offences to be restrained by**

the refuse of chemical works, harmless in itself, passed through drains into the common sewer, and generated therein noxious gases. The owners of the works were held liable for the nuisance thereby caused.

(l) This refers to the order in Chancery which has been made in reference to public sewers, and to the order of the county or other court to be made under this Act.

(m) See the definition in section 20, and the restriction as to the authority in the next section.

(n) See section 13, *post*. See the Local Government Act, 1888, s. 14, *ante*, p. 499, under which the county councils and joint committees constituted by provisional order under that section have also power to enforce the provisions of this Act.

(o) There may be an obstruction or pollution out of the district which will produce mischief within the district, and there may be the same within the district which may produce mischief without the district. In both of these cases the sanitary authority of the district in which the mischief is produced, subject to the proviso in section 6, which prevents contemporaneous action by separate authorities, may take proceedings.

(p) See the Public Health Act, 1875, Part VI., *ante*, p. 276. As regards urban authorities these expenses will be chargeable on the general district rate; as regards rural sanitary authorities they will be chargeable as general expenses.

(q) See section 6, *ante*, which restricts proceedings with reference to offences under Part III. to sanitary authorities, and see the other restrictions contained in section 13. It does not appear that the consent of the Local Government Board is required to the proceedings to be taken by any person aggrieved.

(r) Who will be a person aggrieved? In section 6, there is a provision for a person interested. Persons living near a steam engine, and affected by the smoke, were held to be persons aggrieved within the meaning of 5 & 6 Will. 3, c. 11, s. 3 (*R. v. Dewsnap*, 16 East, 194); so also a person annoyed by offensive smells and vapours. *Reg. v. Williams*, 6 Q. B. 273.

Can these proceedings be taken in addition to those taken by the sanitary authority? It seems that they may be, because the person aggrieved may require some special provision for his benefit. At the same time such person is not prevented from resorting to the remedies which the law otherwise provides. See section 16, *post*.

(s) 31 & 32 Viet. c. cliv.

(t) It may become necessary in some cases to determine this place where there are separate

Appendix.

summary order
of county
court.

this Act is committed may by summary order(*a*) require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act(*b*) may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet.

Previous to granting such order the court may, if it think fit, remit to skilled parties(*c*) to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report(*d*).

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section(*e*) shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order;

And such penalty shall be enforced in the same manner as any debt adjudged to be due by the court:

Moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month(*f*) or such other period less than a month as may be prescribed by such order, the court may, in addition to any penalty it may impose, appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to

jurisdictions. Thus, the act of putting something in the stream may cause the obstruction in a different district, and in a different jurisdiction. All the liquid cast into the stream may be innocuous until it reaches a spot in a different jurisdiction. It seems, however, that reference must be made to the place where the act was done. See, upon this point, *Reg. v. Cotton*, 1 E. & E. 203; *Browne v. Bussell*; *Francombe v. Freeman*, L. R. 3 Q. B. 251; 9 B. & S. 1; 37 L. J. M. C. 65; 18 L. T. (N.S.) 19; 16 W. R. 511; 32 J. P. 196.

(*a*) Although these words point to an injunction only, it appears from the rest of the clause that the order may be something more. The order is in the nature of an injunction, and is in the discretion of the court. *Kirkheaton Local Board v. Ainley*, *ante*, p. 1060.

(*b*) No part of this Act assigns any duty to be performed unless the provision in section 7 can be brought within the terms. But the provision of the section contemplates that the judge of the county court will not always absolutely prohibit the act complained of, but may, in some cases, make an order prescribing that the works may be carried on in such a manner as will prevent the recurrence of the evil. He may give a limited time during which the defendant may provide for the removal of his works, or adopt such means as will, according to the judgment of the court, remove the nuisance.

Very general and very discretionary powers are given to this court as to the order, but a question will arise whether the court can make any order as to the costs of the parties who appear to make and to answer the application for this order respectively. This Act is silent on this point, and it will be necessary to refer to the general powers of the judge of the county court in respect of the orders which he is empowered to make which are rendered applicable to these proceedings by section 11, *post*.

(*c*) *i.e.*, to special referees, such as chemists, engineers, or other scientific persons. This remission is optional with the court, and as the section makes no provision for the costs of this report, which will be usually for the benefit of the defendant, the court, before the matter is remitted, may probably require the defendant to undertake to pay those expenses.

(*d*) The precise meaning of these words is, perhaps, not altogether obvious, but it appears to be intended that the referees shall report that the expenses will be such that the defendant might reasonably be called upon to incur them, or that they would be such that it would be unreasonable that he should be required to undertake them. Indeed, the expenses might in some cases render it impossible for the manufacturer to continue his business.

It must be noticed that the word "reasonably" introduced in section 4 before "available," and in section 5 before "practicable," is omitted here, but doubtless the referees will be guided by a consideration of what is reasonable in regard to the works.

(*e*) This will occur where the judge of the county court either makes an order directing an absolute abstinence from the continuance of the offence, or makes an order specifying certain works to be executed.

This part of this section sets out the means of prohibiting the offences which have been described in the former parts of the Act. The penalty is incurred when an order of the court is disobeyed.

(*f*) This means calendar month. See 52 & 53 Vict. c. 63, s. 3.

the person or persons executing such order, and may be recovered accordingly in the Appendix.
county court.(g)

XI. If either party in any proceedings before the county court, under this Act feels aggrieved by the decision of the court in point of law or on the merits,(h) or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

Appeal from county court and removal of case into High Court of Justice.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys,(i) and if they cannot agree, to be settled by the judge of the county court, upon the application of the parties or their attorneys.

The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint(k) entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court,(l) if it appears to such judge desirable in the interests of justice(m) that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

XII. A certificate granted by an inspector of proper qualifications,(n) appointed for the purposes of this Act by the Local Government Board, to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means, under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact.(o)

Certificate of inspector of Local Government Board as to best practicable means.

(g) The amount will in many cases far exceed the amount imposed as the limit of the jurisdiction of the county court, nevertheless the action may be brought therein. See *Reg. v. Harden*, 2 E. & B. 188; *Guardians of the Hertford Union v. Kimpton*, 11 Ex. 295.

(h) These words appear to apply to the facts of the case as shown by the evidence, and probably also to the requirement made by the judge of the county court. It may be contended before the High Court that the facts proved did not justify the finding of the judge, or if he shall have made an order requiring anything to be done, that such order would not be reasonable or practicable.

Again, the complaining party may urge that their complaint has been improperly dismissed. (i) This alternative appears to be given, because in the county court the parties may appear in person, and the provision is copied from 26 & 27 Vict. c. 74, s. 14, but it is not likely that the parties will often appear in these proceedings in person. Indeed, the sanitary authorities cannot do so.

The appeal is, by section 124 of the County Courts Act, 1888, brought within the operation of section 120 of that Act, and is properly brought by way of motion. *Kirkheaton Local Board v. Ainley*, ante, p. 1060.

(k) This word explains how the proceedings are to be taken in the county court.

(l) Apparently one of the parties only may make the application to the judge, though the other party must be summoned to appear at the hearing.

(m) These are rather indefinite words. They seem to imply that by reason of prejudice or undue interest in the court, either on the part of the judge or the jury, the case cannot be fairly tried in the county court. But it is presumed that the judge would also be moved by the gravity of the question at issue, or its difficulty.

The section does not proceed to declare what can be done by the High Court, but doubtless it will be the same as can be done by the county court.

(n) It is for the Board to determine what are the proper qualifications. It is not open to any of the general inspectors of the department to give the certificate, but the inspector must be specially appointed for this purpose.

This certificate would be available under sections 3—5.

(o) It must be carefully noted that the certificate will only have this effect in proceedings under this Act, though it is to be available to some extent in other proceedings. See section 16, *post*.

Appendix.

Such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.(a)

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.(b)

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal(c) to the Local Government Board against the decision of the inspector; and the Board(d) may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

Restriction
on proceedings
for offences.

XIII. *Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act ;(e)*

Nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months(f) after written notice of the intention to take such proceedings has been given to the offender ;(g)

Nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending.(g)

Orders as
to costs of
inquiries.

XIV. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne ;(h) and every such order and every order for the payment of costs made by the said Board under section 12 of this Act may be made a rule of Her Majesty's High Court of Justice.

Power of
inspectors of
Local Govern-
ment Board.

XV. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and

(a) It does not appear that it can be revoked or recalled before the expiration of the period.

(b) The inspector will, doubtless, not give the certificate until it is paid for. It is probable that the inspector will be appointed with a fixed salary so that no charge will be made for his services, but it is competent for the Board to make a different arrangement, and perhaps this will be done.

The expenses may not only be the personal charges for travelling and maintenance but charges for the cost of experiments and trials, and possibly of the examination of witnesses summoned by the inspector.

It is presumed that the expenses of any of the parties are not dealt with here, and it is doubtful whether the inspector can recover his costs if he refuse the certificate. Hence he may, perhaps, stipulate for a payment in advance before he undertakes the inquiry.

(c) This appeal should be made in writing upon folio foolscap paper addressed to the President of the Board, under cover, directed to the Secretary of the Board, and should state concisely the facts of the case and the grounds of the appeal.

If the local authority appeal, the same may be made under their common seal or under the hand of their clerk.

No time is prescribed for the appeal, but it should be made promptly after the decision.

(d) No precise rule of action is prescribed, and the Board will follow their usual practice of receiving the appeal in writing, communicating it to the other party, and having received an answer, and also communicated with the inspector, will give their decision. There is no need of an order for this decision, though there must be one for the costs if awarded. It is presumed that the costs here referred to are those of the parties. As to the recovery of such costs, see section 14, *post*.

(e) This paragraph being temporary in its application was repealed by the Statute Law Revision Act, 1883.

(f) Care must be given to secure the proper service of this notice, as the statute does not supply any statement of what shall be sufficient service. In general the notice should be signed by the clerk of the sanitary authority proposing to proceed where such authority proceeds. In the case of a proceeding by a person aggrieved the notice will be sufficient if given by his solicitor or agent.

(g) This prohibition is in addition to that in section 6, *ante*, which refers to proceedings under this Act, and the object of this enactment is to prevent the party from being oppressed by a variety of proceedings. But *quære*, what proceedings are referred to?

(h) See the Public Health Act, 1875, s. 294, *ante*, p. 389. It will be observed that this part of the section is confined to the costs incurred by the Board.

matters required to be inspected, similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act.(i) **Appendix.**

(2.) *Saving Clauses.*

XVI. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed ;(k) and nothing in this Act shall legalize any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law :

Powers of Act cumulative.

Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.(l)

XVII. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.(m)

Saving of rights of impounding and diverting water.

XVIII. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by "The Thames Conservancy Acts, 1857 and 1864,"(n) or by "The Thames Navigation Act, 1866," or by the Lea Conservancy Act, 1868,(o) or any Act or Acts extending or amending the said Acts, or either of them, or affect any outfall or works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolitan Management Act, 1855,(p) and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.

Saving of certain Conservancy Acts.

XIX. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment shall be deemed to be an offence against this Act.(q)

Saving of works of certain local authorities.

(i) See the Public Health Act, 1875, s. 296, *ante*, p. 390. The powers are such as were given to poor law inspectors under 4 & 5 Will. 4, c. 76, s. 12, and 11 & 12 Vict. c. 109, ss. 20, 21.

(k) Hence persons specially aggrieved by any acts which would of themselves constitute the offences herein described may pursue the remedies which the law provides for them, as by injunction or by action or indictment. In many cases also such offences are the subject of specific provisions in local Acts. The general Act, 10 & 11 Vict. c. 17, ss. 61—67, relating to waterworks, incorporated with the Public Health Act, 1875 (38 & 39 Vict. c. 55), also contains provisions prohibitory of some of them, and the customs of certain ancient courts and of the Commissioners of Sewers also apply to them. All these provisions are preserved.

Whether the pursuit of these remedies will prevent the adoption of the remedies given by this Act will depend upon the construction of the last proviso in section 13, *ante*.

(l) See section 12. Although this certificate is to be thus considered, the court are not bound to give any particular weight to it. Probably without this enactment it could have been brought under the notice of the court by affidavit or otherwise. However, it cannot now be rejected as irrelevant.

(m) This is an important section, and prevents the operation of the prohibitory clauses of the Act to the extent which the generality of the language would have effected. If the general terms of those sections were considered it might have been found that rights relating to water would be improperly and unnecessarily interfered with.

Thus, a miller or other person may throw rubbish or waste into a stream to divert the course where he has a right to such diversion, or where he desires to impound the water, having a right to do so, and if the act be done with any such object this section appears to exempt him from the provisions of the Act.

It is, however, to be carefully noticed that it is only where there is the right described that this exception takes effect; and further, that no excessive deposit nor any negligence or unnecessary action in this respect will be excused.

(n) See 20 & 21 Vict. c. cxlvii.; 27 & 28 Vict. c. 113; 29 & 30 Vict. c. 89.

(o) See 31 & 32 Vict. c. cliv.

(p) See 18 & 19 Vict. c. 120. It may be observed here that the powers and duties of the Metropolitan Board of Works are now transferred to the London County Council by the 52 & 53 Vict. c. 41, s. 40.

(q) It is to be presumed that the Act referred to has made due provision for the prevention of the pollutions herein dealt with; but, independently of this section, this Act would not have

Appendix.

Definitions.

(3.) Definitions.

XX. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them ; (that is to say,)

"Person" includes^(a) any body of persons, whether corporate or unincorporate :^(b)

"Stream" includes^(c) the sea to such extent, and tidal waters to such point, as may, after local inquiry, and on sanitary grounds,^(d) be determined by the Local Government Board, by order published in the *London Gazette* :

Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers,^(e) and emptying directly into the sea, or tidal waters which have not been^(f) determined to be streams within the meaning of this Act by such order as aforesaid :

"Solid matter" shall not include particles of matter in suspension in water :^(g)

"Polluting" shall not include innocuous discoloration :

"Sanitary authority" means—

In the metropolis as defined by the Metropolis Management Act, 1855,^(h) any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same :⁽ⁱ⁾

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.^(k)

* * * * *

THE LIMITED OWNERS RESERVOIRS AND WATER SUPPLY FURTHER FACILITIES ACT, 1877.

(40 & 41 VICT. CAP. 31.)^(l)

An Act to give further facilities to Landowners of limited interests in England and Wales and Ireland to charge their estates with the expenses of constructing Reservoirs for the Storage of Water, and other similar purposes.

[2nd August, 1877.]

* * * * *

Short title.

I. This Act may be cited as the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877.

applied to these, unless the Local Government Board acted under the next section, which would hardly have occurred against a statutory license.

(a) This word has an extending meaning, and does not include the other significations of the term defined. *Reg. v. Kershaw*, 6 E. & B. 1007 ; *Doe v. Benham*, 7 Q. B. 979.

(b) Hence partnerships and associations are included.

(c) This is not so much a definition as an enactment that the Local Government Board shall determine how much of the sea and of tidal waters shall be brought within the operation of this Act.

Tidal waters appear to signify those parts of rivers in which the tide ebbs and flows, as estuaries are covered by the term sea. As to depositing solid matter in harbours, &c., see *United Alkali Company, Limited*, v. *Simpson*, ante, p. 1062.

As to the rights of riparian owners in tidal rivers, see *Lyon v. The Fishmongers' Company*, L. R. 10 Ch. App. 979.

(d) By these words it is probably intended that the board are not to have any consideration of the Customs, Admiralty, or other regulations, except so far as they coincide with the sanitary necessities of the districts.

It will be well to refer to the provisions respecting port sanitary districts in the Public Health Act of 1875.

(e) See *Portobello (Magistrates of) v. Edinburgh (Magistrates of)*, ante, p. 1061.

(f) Or rather "which shall not be."

(g) It is believed that these words have a technical meaning in chemistry. However, disintegrated matters which do not sink, but float in water, such as the fibres of the pulp of paper, appear to fall within this definition. But if they coagulate in the water and cease to be particles, they will lose the exemption.

(h) See 18 & 19 Vict. c. 120. See also the note on p. 3, ante.

(i) These Acts are all repealed and re-enacted by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76).

(k) See the Public Health Act, 1875, ss. 5, 6, 9, ante, pp. 24, 27. Parts V. and VI. of this Act, relating only to the application of the Act to Scotland and Ireland, are here omitted.

(l) The preamble to this Act has been repealed by the Statute Law Revision Act, 1894

II. This Act shall not extend to Scotland.

Appendix.

III. This Act shall be incorporated with the Improvement of Land Act, 1864, and the two Acts shall be read together as one Act.

Extent of Act.
Act incorporated
with 27 & 28
Vict. c. 114.

IV. The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the undertakers are incorporated with this Act; and in that Act, as incorporated with this Act, the expression "the special Act" shall mean and include the Improvement of Land Act, 1864, and this Act; and the expression "the undertakers" shall mean any person who constructs or erects any reservoir or dam under the authority of either of the last-mentioned Acts.

Certain
provisions of
26 & 27 Vict.
c. 93, incor-
porated.
27 & 28 Vict.
c. 114.

V. The construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or to any manufacturer or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Land Act, 1864, and shall be sanctioned by the commissioners, if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid.

What to be
deemed
improvements
within 27 & 28
Vict. c. 114.

In calculating whether the improvement is likely to effect a permanent increase of the yearly value of the land, or be productive of a yearly revenue to the landowner exceeding the yearly amount proposed to be charged thereon, it shall be lawful for the commissioners to take into account the value of any contract, the terms of which have been agreed upon between the landowner and any sanitary or other local authority, or water company, or manufacturer, or other persons for the purpose of supplying such authority, company, person, or persons with water, as well as the effect on such value or revenue of any sum expended by the landowner in the construction of the works over and above the sum proposed to be charged upon the land.

When the improvement will afford a supply of water to persons residing or engaged in labour on the lands on which the proposed works will be situate, or on any other lands settled to the same uses, the commissioners may, if they think fit, sanction the improvement, although it may not be shown that the same will effect a direct yearly increase in the value of the lands, or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon.

VI. Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under this Act may enter into any agreement for the supply of water to any sanitary or other local authority, water company, manufacturer, or other person, for any term not exceeding the number of years during which the cost of the improvement, or any part of it, is made a charge upon the estate: Provided that every such agreement be approved by the commissioners, and that no premium or benefit in the nature of a premium be reserved thereby by the landowner.

Supply of
water to local
authority, &c.

VII. Any company now authorised to contract with landowners in England or Wales for the execution of any works for the improvement of land, or to make advances for the purpose of executing or assisting in the execution of such works, may, with the approval of the commissioners, contract with any such landowner for the execution of any reservoirs or works of water supply, the cost of which may by this Act be charged upon the estates of such landowner, and may, with the like approval, make advances for the purpose of executing or assisting in the execu-

Power to con-
tract for execu-
tion of reser-
voirs, &c.

(57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment. The effect of this Act and its bearing upon the subject of public health have already been stated in the notes to section 51 of the Public Health Act, 1875, *ante*, p. 76. It has been thought advisable to set out here the full text of the Act.

Appendix. tion of such reservoirs or works ; and for this purpose the execution of any such reservoirs or works shall be deemed to be an improvement of land within the meaning of any Act of Parliament or articles of association relating to any such company.

Subscriptions to waterworks. VIII. Any landowner desiring to charge his estate with subscriptions for the construction of waterworks by a water company may charge his estates with such moneys on the same terms and conditions as he may under the Improvement of Land Act, 1864, charge his estates with money subscribed for the construction of railways or navigable canals ; and for this purpose the provisions contained in sections seventy-eight to eighty-nine, both inclusive, of the Improvement of Land Act, 1864, shall apply, *mutatis mutandis*, to such subscriptions, as if the same had been subscribed for the construction of a railway or navigable canal.

Protection of rights. IX. Nothing in this Act shall be construed to authorise any landowner, or any water company, local authority, person, or persons authorised by any landowner, to injuriously affect any reservoir, canal, river, stream, or navigation, or the feeders thereof, or the supply, quality, or fall of water contained in any reservoir, canal, river, stream, or navigation, or in the feeders thereof, or any other water rights, or easements in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream, navigation, feeders, or such supply, quality, or fall of water, or other water rights or easements, unless the landowner, water company, local authority, person, or persons first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

Definitions. X. In this Act the following words and expressions shall have the following meanings ; (that is to say,)

"The commissioners" means the Inclosure Commissioners of England and Wales
(a)

"The Improvement of Land Act, 1864," means the 27th and 28th Vict. c. 114 ;

"Works for the supply of water" includes wells, pumps, reservoirs, cisterns, ponds, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, machinery, and things for supplying or used in supplying water :

"Water company" means any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their own profit.

"Local authority" means any authority having jurisdiction for any public local purpose.

The several words and expressions to which by the Improvement of Land Act, 1864, meanings are assigned, shall in this Act have the same respective meanings as in that Act.

THE OPEN SPACES (METROPOLIS) ACT, 1877.

(40 & 41 VICT. CAP. 35.)(b)

An Act for affording Facilities for the enjoyment by the Public of Open Spaces in the Metropolis. [2nd August, 1877.]

* * * * *

Metropolitan Board of Works may acquire and hold open spaces for benefit of public.

I. The Metropolitan Board of Works may, by purchase on voluntary sale, or by the gift of the person or persons legally entitled to dispose of the same, acquire or accept the ownership of any open spaces, whether inclosed within rails or palings, or uninclosed, situated in the metropolis, and hold the same in trust for the perpetual use thereof by the public for exercise and recreation, and may from time to time make

(a) Words relating to Ireland only are here omitted.

(b) So much of this Act as is extended with amendments to urban and certain rural sanitary districts by section 5 of the Open Spaces Act, 1887 (50 & 51 Vict. c. 32, *post*), is here set out as amended.

The preamble to this Act was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.

bye-laws for the regulation of such open spaces, and may by such bye-laws provide for the removal of any person infringing any such bye-law by any officer of the said board or police constable. Bye-laws under this section shall be made in the same manner and subject to the same conditions as bye-laws made by the said board under the Metropolis Management Act, 1855.(c)

Appendix.

18 & 19 Vict.
c. 120.

II. Where any open spaces now are or hereafter may be used as places of exercise and recreation for the inhabitants of certain houses, and the property and right of user is now or hereafter may be vested in one or more persons as owners or occupiers of such houses, such owners and occupiers (if any) may convey to the Metropolitan Board of Works, in trust for the public, the right to enter upon and use and enjoy such open spaces, subject to such terms and conditions as may be agreed upon.

Right of entry
to places of
recreation may
be conveyed
to Metropolitan
Board of Works.

III. The Metropolitan Board of Works shall be entitled to make such provision as may be necessary for maintaining and protecting the open spaces so acquired by them.

Provision for
keeping up open
spaces.

* * * * *

THE CANAL BOATS ACT, 1877.

(40 & 41 VICT. CAP. 60.)(d)

An Act to provide for the Registration and Regulation of Canal Boats used as Dwellings.
[14th August, 1877.]

* * * * *

I. [After the expiration of twelve months after the commencement of this Act, or if the regulations of the Local Government Board hereinafter mentioned have not at that time come into force,](e) then after the expiration of six months from the date at which they have come into force, a canal boat shall not be used as a dwelling unless it has been registered in accordance with this Act.

Registration
of use of
canal boat as
dwelling.

The owner of a canal boat may register that boat with the registration authority hereinafter mentioned(f) as a dwelling for such number of persons of the specified age and sex as may be allowed under the provisions of this Act; and the boat shall be used as a dwelling only for the number of persons of the age and sex for which it is registered.

If a canal boat is used as a dwelling in contravention of this Act, the master of the boat, and also the owner of the boat, if he is in fault, shall each be liable to a fine not exceeding twenty shillings for each occasion on which the boat is so used.

II. The Local Government Board shall make regulations, and may from time to time revoke and vary such regulations—(g)

Local Govern-
ment Board
to make
regulations for
registration,
fixing number
of persons,
promoting
cleanliness, and
preventing
infectious
disease.

- (1.) For the registration of canal boats under this Act, including certificates of registration, and the fees in connection with such registration; and
- (2.) For the lettering, marking, and numbering of such boats; and
- (3.) For fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat; and
- (4.) For promoting cleanliness in and providing for the habitable condition of canal boats; and
- (5.) For preventing the spread of infectious disease by canal boats.(h)

(c) As to bye-laws made under this Act by a sanitary authority, see 50 & 51 Vict. c. 32, s. 10, *post*.

(d) See the amending Act, 47 & 48 Vict. c. 75, *post*.

(e) The words bracketed in italics at the commencement of this section have been repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(f) See section 7, *post*. It will be observed that the owner has the choice of several authorities with whom to register. For the definition of *owner*, see section 14, *post*.

(g) Regulations have been made under this section, and will be found in Appendix II., *post*. As to default in compliance with these regulations, see 47 & 48 Vict. c. 75, s. 2, *post*.

(h) See section 4, *post*.

Appendix.

The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.

Certificate of registry and lettering and numbering of boat.

III. Upon the registry of a boat under this Act, the registration authority shall give to the owner thereof two certificates of registry, identifying the owner and the boat, and stating the place to which the boat is registered as belonging, and the number, age, and sex of the persons allowed to dwell in the boat, and such other particulars as may be provided by regulations under this Act, as may seem fit to the registration authority, and the master shall have the care of one of such certificates.(a)

Every canal boat when registered shall be lettered, marked, and numbered in some conspicuous manner (as directed by the regulations made under this Act), and such lettering, marking, and numbering shall include the word "registered," and the name of the place to which the boat is registered as belonging, and the registered number.(b)

Any boat not lettered, marked, and numbered in conformity with this section, or having the letter, mark, or number altered, defaced, or obliterated, shall be deemed, for the purposes of this Act, to be an unregistered canal boat.(c)

Power of sanitary authority for prevention of infectious disease in canal boats.

IV. Where any sanitary authority within whose district a canal or any part of a canal is situate is informed by the master of a canal boat or otherwise that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the certificate of their medical officer of health, or of any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading, and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875,(d) and may also, if need be, detain the boat; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

38 & 39 Vict. c. 55.

Authorised person may enter boat, &c.

V. Where any person duly authorized by a registration or sanitary authority, or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorization, purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorized as aforesaid, enter by day(e) such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act, or a person suffering from an infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person.

If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

Education of children dwelling on canal boats.

VI. A child in a canal boat registered in pursuance of this Act, and his parent shall, for the purposes of the Elementary Education Acts, 1870, 1873, and 1876, be deemed, subject as hereinafter mentioned, to be resident in the place to which the

(a) This certificate is made void by structural alterations in the boat. 47 & 48 Vict. c. 75, s. 1, *post*.

(b) The name of the school district referred to in section 7, *post*, need not be painted on the boat.

(c) The boat must be lettered on both sides or on the stern, so as to be visible from both sides of the canal. 47 & 48 Vict. c. 75, s. 7, *post*.

(d) See the Public Health Act, 1875, s. 124, *ante*, p. 143. See also the provisions of 53 & 54 Vict. c. 34, of which section 2 extends its provisions to vessels, boats, &c.

(e) *i.e.* between 6 A.M. and 9 P.M. 47 & 48 Vict. c. 75, s. 9, *post*.

boat is registered as belonging, (f) and shall be subject accordingly to any bye-law in force under the said Acts in that place. **Appendix.**

Provided that if the parent satisfies the school board or school attendance committee having authority in that place that the child is actually attending school, or is under efficient instruction in accordance with the said Acts, in some other school district, the said board or committee shall grant him without charge a certificate to that effect, and thereupon he and his child shall be deemed for the purposes aforesaid to be resident in the school district in which the child is so attending school, or under efficient instruction, and shall be subject to any bye-law in force therein.

The said certificate may, on application by the parent, be rescinded or varied by the school board or school attendance committee for the place to which the boat is registered as belonging, and may be rescinded without application by any such board or committee, if they are satisfied, after due notice to the parent, that his child is not properly attending school or under efficient instruction in the school district mentioned in the certificate.

VII. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board. **Registration authority.**

A canal boat shall be registered with some registration authority having a district abutting on the canal on which such boat is accustomed or intended to ply. (g)

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall register any canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered. **33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.**

VIII. The expenses incurred in the execution of this Act by a local authority shall be defrayed as follows: **Expenses of sanitary authority.**

- (1.) When they are incurred by an urban sanitary authority, a rural sanitary authority, or a port sanitary authority, they shall be defrayed out of the fund or rate out of which the expenses of such authority, as a sanitary authority under the Public Health Act, 1875, (h) are defrayed; provided that when they are incurred by a rural sanitary authority they shall be deemed to be general expenses; (i) and
- (2.) When they are incurred by a vestry or district board in the metropolis they shall be defrayed as expenses incurred by such vestry or board in the execution of the Metropolis Management Act, 1855, and the Acts amending the same. **38 & 39 Vict. c. 55. 18 & 19 Vict. c. 120.**

IX. An order of the Local Government Board making, revoking, or varying any regulation in pursuance of this Act shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament. **Regulations to be laid before Parliament.**

The Local Government Board shall take steps for enabling all persons interested in any regulations made by that Board in pursuance of this Act to obtain copies thereof at such places in the neighbourhood of canals as the Local Government Board may prescribe, on payment of such sum not exceeding sixpence as may be prescribed by that Board. (k)

X. If the master of any canal boat illegally detains the certificate of registry of such boat, he may, on summary conviction before two justices, be directed by order of such justices to deliver up such certificate, and shall, in addition thereto, be liable to a fine not exceeding forty shillings, and the justices may direct any part of such fine to be paid to the person injured by the detention of such certificate. **Illegal detention of certificate of registry.**

(f) See the next section.

(g) This gives the owner the choice of the place of registration.

(h) That is, out of the general district fund.

(i) See *ante*, p. 308. As to the duty of the local authority to enforce the Act and regulations under it, see 47 & 48 Vict. c. 75, s. 3, *post*.

(k) See the orders of the Local Government Board prescribing places and fixing prices for sale of regulations. "Glen's Local Government Orders," pp. 473 and 478.

Appendix.

Application
of fees under
this Act.

Power of canal
company, &c.,
to establish
schools.

25 & 26 Vict.
c. 89.

Recovery of
penalties.

Definitions.

18 & 19 Vict.
c. 120.

38 & 39 Vict.
c. 55.

17 & 13 Vict.
c. 104.

XI. All fees paid in respect of registration under this Act shall be carried to the fund or rate out of which the expenses incurred in the execution of this Act by the authority making such registration are by this Act declared to be payable.(a)

XII. Any company or association, corporate or unincorporate, being the owners of any canal boats, or being the owners, lessees, or undertakers of any canal, may, with the assent of a special resolution of their members, and notwithstanding any Act of Parliament, charter, or document regulating the funds of the company or association, appropriate any portion of their funds to the establishment and maintenance, or establishment or maintenance, of a school or schools wherein the children of the persons employed in canal boats may be lodged, maintained, and educated, or educated only; with this restriction, that the children shall not be maintained gratuitously, but the lodging or education may be wholly or partially gratuitous.

A "special resolution" shall for the purposes of this Act mean a resolution passed in manner provided by the fifty-first section of the Companies Act, 1862.

XIII. Offences under this Act may be prosecuted, and fines under this Act may be recovered on summary conviction before two justices having jurisdiction, either in the place to which the boat in respect of which the offence was committed is registered as belonging, or in the place where the offence is committed, or in the place where the alleged offender for the time being is, in manner provided by the Act of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intitled "An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," and the Acts amending the same.(b)

XIV. In this Act, unless the context otherwise requires—

The expression "sanitary authority" means an urban sanitary authority, a rural sanitary authority, or a port sanitary authority; provided that in the case of the parishes mentioned in Schedule A. and the districts mentioned in Schedule B. to the Metropolis Management Act, 1855, so far as they are not within the jurisdiction of a port sanitary authority, the vestry of any such parish and the district board of any such district elected under the Metropolis Management Act, 1855, and the Acts amending the same, shall be deemed to be sanitary authorities, and where other sanitary authorities are by this Act empowered to exercise powers conferred by the Public Health Act, 1875, may exercise similar powers conferred by any Act of Parliament extending to such parishes or districts:

The expression "parent" includes guardian, and every person who is liable to maintain or has the actual custody of any child:

The expression "urban sanitary authority" and "rural sanitary authority" and "port sanitary authority" have the same meaning as in the Public Health Act, 1875:(c)

The expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or not within the ebb and flow of the tide:

The expression "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act, 1854, and the Acts amending the same:(d)

The expression "owner" includes a person who, though only the hirer of a canal boat, appoints the master and other persons working such boat:

(a) See section 8, *supra*.

(b) Fines are to be paid to the registration or sanitary authority. 47 & 48 Vict. c. 75, s. 8, *post*.

(c) *Ante*, pp. 24 and 384.

(d) The excepted vessels may in some cases be registered as canal boats. 47 & 48 Vict. c. 75, s. 10, *post*.

The expression "master" in relation to a canal boat means the person having for the time being command or charge of the boat. **Appendix.**

XV. [*Commencement of Act.*](e)

XVI. This Act shall not extend to Scotland or Ireland.

Extent of Act.

XVII. This Act may be cited as the Canal Boats Act, 1877.

Short title.

THE LOCAL TAXATION RETURNS ACT, 1877.

(40 & 41 VICT. CAP. 66.)(f)

An Act to amend the Law with respect to the Annual Returns of Local Taxation in England, and for other purposes relating to such taxation.

[14th August, 1877.]

* * * * *

I. The annual return required by law to be made of any receipts or expenditure of a local authority, or of any rates, taxes, tolls, or dues, shall be made for the financial year ending on the twenty-fifth day of March, or on such other day as the Local Government Board may from time to time prescribe, upon the application of any particular authority in respect of their receipts and expenditure, or of any rates, tolls, taxes, or dues levied by them, or in respect of the receipts and expenditure and of the rates, taxes, tolls, or dues levied by any class of authorities.(g)

Date for annual return of local taxation.

Every such return shall be sent to the Local Government Board and not to one of Her Majesty's principal Secretaries of State, and shall be so sent within one month after the audit of the receipts and expenditure to which the return relates is completed, or if the audit is not completed within six months after the end of the financial year for which the return is to be made, then on the expiration of such six months, or if there is no audit, then within one month after the end of the said financial year.

For the purpose of any such return the date to which the accounts of any local authority are required by law to be made up, and the date at which such accounts are required by law to be audited, and auditors are required to be elected or appointed, may be altered by the local authority, with the approval of the Local Government Board: Provided that nothing in this section shall prevent any accounts being made up and audited at shorter periods than twelve months, so that one of such shorter periods ends on the last day of the financial year for which the return of such accounts is to be made.

II. Every return to which this Act applies shall be made by the clerk of the local authority, or where no clerk is appointed or acting, by the treasurer or other officer keeping the accounts of the receipts and expenditure, rates, taxes, tolls, or dues, to which the return relates, and any such clerk, treasurer, or other officer who makes default in making any such return shall be liable to a penalty not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice.(h)

Obligation of clerk of local authority to send return.

III. The expression "local authority" in this Act means any justices, municipal or other corporation, board, guardians, sanitary authority, vestry, commissioners, inspectors, trustees, or other body of persons required by law to make to one of Her

Definition of "local authority."

(e) Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(f) The preamble to this Act was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment. See also 23 & 24 Vict. c. 51, *ante*, p. 929. This Act is repealed by the Municipal Corporations Act, 1882, in so far as it relates to the receipts and expenditure of municipal corporations. As to returns under that Act, see 45 & 46 Vict. c. 50, s. 28.

(g) This return is dispensed with where the accounts are audited by a district auditor, and a duplicate of the financial statement is sent to the Local Government Board under 42 Vict. c. 6, s. 3.

(h) See 23 & 24 Vict. c. 51, s. 4, *ante*, p. 929.

Appendix. Majesty's principal Secretaries of State, or to the Local Government Board, a return of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them or under their direction.

First return under Act.

IV.(a) The Local Government Board shall make such provision as may seem to them necessary for any change of the date of the accounts and audit of the accounts of any local authority which may be rendered necessary by the provisions of this Act, so as to cause as little inconvenience as possible to the local authority.

Short title.

V. This Act may be cited as the Local Taxation Returns Act, 1877.
 the Local Taxation Returns Act, 1860, and this Act may be cited as the Local Taxation Returns Acts, 1860 and 1877. . . .

THE BATHS AND WASHHOUSES ACT, 1878.

(41 & 42 VICT. CAP. 14.)(b)

An Act to amend the Law relating to Public Baths and Washhouses.

[27th May, 1878.]

* * * * *

Short title.

"Covered swimming bath."

I. This Act may be cited for all purposes as the Baths and Washhouses Act, 1878. The words "covered swimming bath" in this Act shall mean a swimming bath protected by a roof or other covering from the weather.

Construction of Act.
 38 & 39 Vict.
 c. 66.

II. This Act and the recited Acts, as amended by the Statute Law Revision Act, 1875, and the Public Health Act, 1875, and by this Act, shall be construed and carried into execution as one Act; and the words "the council and the commissioners" when used in this Act shall include the urban sanitary authority mentioned in the tenth section of the Public Health Act, 1875.

38 & 39 Vict.
 c. 55.

Covered swimming baths authorised.

III. All the provisions of the recited Acts respectively shall be construed to extend and to have extended from the passing of such Acts respectively to covered swimming baths as well as to baths, washhouses, and open bathing places.

As to charges for swimming baths.

IV. The council and the commissioners respectively may from time to time provide covered swimming baths, and make such reasonable charges for the use thereof as they shall think fit, not exceeding the charges mentioned in the schedule annexed to this Act.

Power to close swimming baths for a limited period.

V. The council and the commissioners respectively may during such period, not exceeding five months in any one year, as they shall think fit, from the beginning of the months of November to the end of the month of March, close any covered swimming bath or open swimming bath, and may either keep the same closed or may establish therein a gymnasium or such other means of healthy recreation as they shall think fit, or may during such period allow any covered or open swimming bath to be used as an empty building for such purposes of healthful recreation or exercise as they shall think fit during such period as aforesaid, and may at any time allow any portion of the public baths not required by the commissioners to be used for holding vestry meetings or other parochial purposes: Provided always, that no covered or open swimming bath when closed may be used for music or dancing.

Power to make bye-laws.

VI. The council and the commissioners respectively may make bye-laws for the regulation, management, and use of the open or swimming baths when used for any of the purposes mentioned in the fifth section of this Act; and all the provisions in

(a) The provision of this section as to the first return was repealed by the Statute Law Revision Act, 1883.

(b) See 9 & 10 Vict. c. 74, *ante*, p. 845, and 10 & 11 Vict. c. 61, *ante*, p. 896; also 45 & 46 Vict. c. 30, *post*. The preamble to this Act was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.

the principal Act relating to bye-laws shall extend and apply to bye-laws made under this section.(c) **Appendix.**

VII. The council and the commissioners respectively may appoint and remove at pleasure such officers and servants as shall be necessary for the management and superintendence of any gymnasium or other means of recreation established under this Act, and may appoint reasonable salaries, wages, and allowances for such officers and servants. **Power to appoint officers.**

VIII. The council and the commissioners respectively may from time to time make such reasonable charges for the use of the gymnasium or other means of recreation established under this Act, or for the use of any covered swimming bath as an empty room, as they shall think fit. **Power to make charges for gymnasium, &c.**

IX. The provisions in the twenty-first, twenty-second, and twenty-third sections of the principal Act(d) authorising the borrowing and advancement of money for the purposes of that Act shall be taken to authorise the borrowing and advancement of money in like manner for the purposes of this Act; and the approval of the Local Government Board shall be substituted for that of the . . . Treasury in all cases where money is borrowed for the purposes of the principal Act or this Act. **Powers of borrowing, &c., extended to this Act.**

X. The council and the commissioners respectively, and their respective servants and agents, may remove any person offending against any of the bye-laws made under this Act and the recited Acts, or any of them; and any bath or washhouse, or open bathing place, or covered swimming bath, established under this Act and the recited Acts, or any of them, shall be taken to be a public and open place, so as to make offences against decency therein criminal offences. **Power to remove offenders. Baths, &c., to be considered public and open places.**

XI. The council and the commissioners respectively, and their respective officers and servants, may refuse admittance to any bath, washhouse, open bathing place or covered swimming bath, or any of them, to any person (1) who shall have been convicted of wilfully disobeying any of the bye-laws in such bath, washhouse, open bathing place, or covered swimming bath; (2) who shall have been convicted of any offence against public decency in any of such baths, washhouses, open bathing places, or covered swimming baths as aforesaid. **Power to refuse admittance to baths, &c., to offenders.**

XII. The provisions of an Act passed in the session held in the twenty-ninth year of the reign of Her present Majesty, chapter thirty-one, intituled "An Act to provide for superannuation allowances to officers of vestries and other boards within the area of the Metropolis Local Management Act," shall extend to and include officers and servants employed in and about any baths, washhouses, open bathing places, or covered swimming baths established under this Act and the recited Acts, or any of them, by the council or the commissioners within the area of the Metropolis Local Management Act. **Power to make superannuation allowances to officers, &c., employed about baths, &c., within the metropolis.**

XIII. The expenses of carrying this Act into execution shall be defrayed, and the income arising from the use in any manner of any covered swimming bath established under the provisions of this Act and the recited Acts, or any of them, shall be applied, in the same manner as that in which the expenses of the principal Act are thereby directed to be defrayed, and the income arising from baths and washhouses, and open bathing places, is hereby directed to be applied. **Expenses of Act and income arising to be applied as under principal Act.**

XIV. The charge of one halfpenny, fixed by the tenth and eleventh Victoria, chapter sixty-one, section seven,(e) and Part Five of the Schedule to that Act, shall be increased to one penny. **Increase of charge.**

THE SCHEDULE ABOVE REFERRED TO.

Charges for covered Swimming Baths.

1st Class.—Any sum not exceeding eightpence for each person.

2nd Class.—Any sum not exceeding fourpence for each person.

3rd Class.—Any sum not exceeding twopence for each person.

(c) Model bye-laws have been issued by the Local Government Board under this section.

(d) See these sections, *ante*, p. 849.

(e) *Ante*, p. 896.

Appendix.

THE FACTORY AND WORKSHOP ACT, 1878.

(41 & 42 VICT. CAP. 16.)(a)

An Act to consolidate and amend the Law relating to Factories and Workshops.

[27th May, 1878.]

* * * * *

Preliminary.

Short title.

I. This Act may be cited as the Factory and Workshop Act, 1878.

* * * * *

PART I.

GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

(1.) *Sanitary Provisions.*(b)Sanitary
condition of
factory and
workshop.III. A factory *and a workshop*(c) shall be kept in a cleanly state and free from effluvia arising from any drain, privy,(d) or other nuisance.A factory *or workshop*(c) shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein,(d) and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.A factory *or workshop*(c) in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.(e)Notice by
inspector to
sanitary
authority of
sanitary defects
in factory or
workshop.

IV. Where it appears to an inspector under this Act that any act, neglect, or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop is punishable or remediable under the law relating to public health,(f) but not under this Act, that inspector shall give notice in writing of such act, neglect, or default to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law.(g)

An inspector under this Act may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority.(h)

* * * * *

(a) Only those sections of the Act which bear upon the duties of sanitary authorities are here included. The amending Acts, 46 & 47 Vict. c. 53, 54 & 55 Vict. c. 75, and 58 & 59 Vict. c. 37, are also set out, *post*, in so far as they are within the scope of this Work.(b) See the provisions of the Public Health Act, 1875, s. 91, *ante*, p. 108, as to factories not kept in a cleanly state or overcrowded. The provisions of this section are to be enforced as to bakehouses by the local authority. See 46 & 47 Vict. c. 53, s. 17, *post*.(c) These words are repealed by 54 & 55 Vict. c. 75, s. 3, *post*. As to the power of the Secretary of State with reference to sanitary provisions in workshops, see sections 1—4 of the same Act, *post*.(d) In this section, for the word "privy" must now be substituted the words "watercloset, earthcloset, privy, urinal," and for the words "injurious to the health of the persons employed therein" must be substituted "dangerous or injurious to the health of the persons employed therein." See 54 & 55 Vict. c. 75, s. 5, *post*. As to what constitutes overcrowding so as to be dangerous or injurious to the health of the persons employed, see 58 & 59 Vict. c. 37, s. 1, *post*.(e) As to the enforcement of this section in relation to tenement factories, see 58 & 59 Vict. c. 37, s. 24, *post*.

(f) That is, under the Public Health Act, 1875.

(g) And to inform the inspector of the proceedings taken in consequence of the notice. See 58 & 59 Vict. c. 37, s. 3 (1), *post*.(h) As to these officers, see *ante*, p. 260. The provisions of this section are now extended to workshops conducted on the system of not employing any child, young person, or woman therein, and to laundries. 54 & 55 Vict. c. 75, s. 2, *post*.

PART II.

SPECIAL PROVISIONS RELATING TO PARTICULAR CLASSES OF FACTORIES AND WORKSHOPS.

(1.) *Special Provisions for Health in certain Factories and Workshops.*

XXXIII.(i) For the purpose of securing the observance of the requirements of this Act as to cleanliness in every factory *and workshop*(k) all the inside walls of the rooms of a factory *or workshop*(k) and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of a factory *or workshop*(k) if they have not been painted with oil or varnished once at least within seven years, shall be limewashed once at least within every fourteen months, to date from the period when last limewashed; and if they have been so painted or varnished, shall be washed with hot water and soap once at least within every fourteen months, to date from the period when last washed.

Limewashing and washing of the interior of factories and workshops.

A factory *or workshop*(k) in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Where it appears to a Secretary of State that in any class of factories *or workshops*(k) or parts thereof, the regulations in this section are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by order made under this part of this Act, grant to such class of factories *or workshops*(k) or parts thereof, a special exception that the regulations in this section shall not apply thereto.

XXXIV. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons,(l) all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months; where limewashed the limewashing shall be renewed once at least in every six months.

Limewashing, painting, and washing of the interior of bakehouses.

A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act.

XXXV. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons,(l) a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place; unless it is constructed as follows; (that is to say,)

Provision as to sleeping places near bakehouses.

Unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

Unless there be an external glazed window of at least nine superficial feet in area, of which at the least four-and-a-half superficial feet are made to open for ventilation.

Any person who lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for every subsequent offence, five pounds.

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(i) The provisions of this and the two next sections are to be enforced as to bakehouses by the sanitary authority. See 46 & 47 Vict. c. 53, *post*. See also as to the enforcement of certain parts of this section in relation to tenement factories, 58 & 59 Vict. c. 37, s. 24, *post*.

(k) These words were repealed by 54 & 55 Vict. c. 75, s. 3, *post*.

(l) These sections now apply to every bakehouse wherever situate, and are not limited to bakehouses in cities, &c., of more than 5,000 population. See 58 & 59 Vict. c. 37, s. 27, *post*.

Appendix.

Exception of domestic factories and workshops and certain other workshops from certain provisions of the Act.

(4.) *Special Exception for Domestic and certain other Factories and Workshops.*

LXI. The provisions of this Act which relate—

- (1.) To the cleanliness (including limewashing, painting, varnishing, and washing), or to the freedom from effluvia, or to the overcrowding, or ventilation of a factory or workshop ; or
 - (2.) To all children, young persons, and women employed in a factory or workshop having the times allowed for meals at the same hour of the day, or during any part of the times allowed for meals in a factory or workshop being employed in the factory or workshop or being allowed to remain in any room ; or
 - (3.) To the affixing of any notice or abstract in a factory or workshop ; or specifying any matter in the notice so affixed ; or
 - (4.) To the allowance of any holidays to a child, young person, or woman ; or
 - (5.) To the sending notice of accidents ;
- shall not apply—

- (a.) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there ; or
- (b.) *To a workshop which is conducted on the system of not employing children or young persons therein, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system.*(a)

And the provisions of this Act with respect to certificates of fitness for employment shall apply to any such private house, room, or place as aforesaid, which by reason of the nature of the work carried on there is a factory, as if the same were a workshop within the meaning of this Act, and not a factory.

Where the occupier of a workshop has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed for all the purposes of this Act to be conducted on the said system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the said system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing, and washing), or to freedom from effluvia.

* * * * *

(5.) *Supplemental as to Special Provisions.*

Requirement of sanitary provisions as condition of special exceptions.

LXIII. Where it appears to a Secretary of State that the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of any child, young person, or woman employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night, he may by order made under this Part of this Act direct that the adoption of such means or provision shall be a condition of such employment ; and if it appears to a Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by order made under this Part of this Act, rescind the order directing such adoption without prejudice to the subsequent making of another order.

Power to rescind order granting or extending exception.

LXIV. Where an exception has been granted or extended under this Part of this Act by an order of a Secretary of State, and it appears to a Secretary of State that such exception is injurious to the health of the children, young persons, or women

employed in, or is no longer necessary for the carrying on of the business in the class of factories or workshops, or parts thereof, to which the said exception was so granted or extended, he may, by an order made under this Part of this Act, rescind the grant or extension, without prejudice to the subsequent making of another order.

Appendix.

LXV. Where a Secretary of State has power to make an order under this Part of this Act, the following provisions shall apply to that order :—(b) Provision as to order of Secretary of State.

- (1.) The order shall be under the hand of the Secretary of State, and shall be published in the *London Gazette*, and shall come into operation at the date of such publication in the *London Gazette*, or at any later date mentioned in the order :
- (2.) The order may be temporary or permanent, conditional or unconditional, and whether extending a prohibition or exception, granting an exception, directing the adoption of any means or provisions, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly :
- (3.) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the same has been so laid before such House, resolve that such order ought to be annulled, the same shall, after the date of such resolution, be of no effect, without prejudice to the validity of anything done in the meantime under such order, or to the making of any new order :
- (4.) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the extension or grant or otherwise for making the order.

LXVI. An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception under this Part of this Act, shall serve on [*an inspector*](c) and (except in the case of a factory, or workshop to which the provisions of this Act with respect to the affixing of notices do not apply) affix in his factory or workshop notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed. Provisions as to occupier availing himself of special exceptions, and registry of work under them.

Before the service of such notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of such notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that such special exception does not apply to his factory or workshop, unless he has previously served on an inspector notice that he no longer intends to avail himself of such special exception.

The notice so served and affixed shall specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every child, young person, and woman where they differ from the ordinary hours or times.(d)

An occupier of a factory or workshop shall enter in the prescribed register, and report to [*an inspector*](c) the prescribed particulars respecting the employment of a child, young person, or woman in pursuance of an exception, but such entry and report need not be made in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply, except so far as may be from time to time prescribed by a Secretary of State.(e)

Where the occupier of a factory or workshop avails himself of an exception under this Part of this Act, and a condition for availing himself of such exception (whether

(b) See 54 & 55 Vict. c. 75, as to orders to keep for inspection lists of outworkers. See also 58 & 59 Vict. c. 37, s. 1 (2), as to overcrowding ; section 5 (3) as to employing persons in places injurious to health ; section 29 (4), as to notification of certain diseases ; section 39 as to treating separate branches as separate factories ; section 47 as to publication of orders.

(c) "The inspector of the district" is now substituted by 58 & 59 Vict. c. 37, s. 44 (1), *post*.

(d) As to variation of the times in laundries, see 58 & 59 Vict. c. 37, s. 22 (1) (v.), *post*.

(e) This report must be sent to the inspector not later than 8 P.M. of the day on which the child, &c., is employed. 54 & 55 Vict. c. 75, s. 14. The same section requires that a notice containing the prescribed particulars should be affixed in the factory during the prescribed time. See the section, *post*.

Appendix.

specified in this Part of this Act, or in an order of a Secretary of State made under this Part of this Act), is not observed in that factory or workshop, then

- (1.) If such condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and
- (2.) In any other case a child, young person, or woman employed in the factory or workshop, in alleged pursuance of the said exception, shall be deemed to be employed contrary to the provisions of this Act.

PART III.

ADMINISTRATION, PENALTIES, AND LEGAL PROCEEDINGS.

* * * * *

Registers to be kept in factory or workshop

LXXVII. The occupier of every factory and workshop to which this section applies shall keep in the prescribed form and with the prescribed particulars, registers of the children and young persons employed in that factory or workshop, and of their employment, and of other matters under this Act.^(a)

The occupier of a factory or workshop shall send to an inspector such extracts from any register kept in pursuance of this Act as the inspector from time to time requires for the execution of his duties under this Act.

This section applies to every factory and workshop in which a child or young person under the age of sixteen years is, for the time being, prohibited under this Act from being employed without a certificate of fitness for employment.

Where by reason of the number of children and young persons employed in a factory or workshop to which this section does not for the time being apply, or otherwise, it seems expedient to a Secretary of State so to do, he may order the occupier of that factory or workshop to keep a register under this section, with power to rescind such order; and while such order is in force this section shall apply to that factory or workshop.

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

Affixing in factory or workshop in abstract of Act and notices.

LXXVIII. There shall be affixed at the entrance of a factory and a workshop, and in such other parts as an inspector for the time being directs, and be kept constantly so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop—

- (1.) The prescribed abstract of this Act; and
- (2.) A notice of the name and address of the prescribed inspector; and
- (3.) A notice of the name and address of the certifying surgeon for the district; and
- (4.) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and
- (5.) Every notice and document required by this Act to be affixed in the factory or workshop.^(b)

In the event of a contravention of this section in a factory or workshop the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

* * * * *

Fines.

Fine for not keeping factory or workshop in conformity with Act.

LXXXI. If a factory or workshop is not kept in conformity with this Act, the occupier thereof^(c) thereof shall be liable to a fine not exceeding ten pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier within the time named in the order, for the purpose of bringing his factory or workshop into conformity

(a) Failure to enter in this register the prescribed particulars as to whitewashing (see sections 33 and 34, *ante*), is *prima facie* evidence of failure to limewash. See 58 & 59 Vict. c. 37, s. 43.

(b) See also 58 & 59 Vict. c. 37, s. 1 (3), *post*.

(c) In the case of a tenement factory the owner is made liable instead of the occupier with respect to certain matters. See 58 & 59 Vict. c. 37, s. 24, *post*.

with this Act; the court may, upon application, enlarge the time so named, but if after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to fine not exceeding one pound for every day that such non-compliance continues. (d) **Appendix.**

LXXXII.(e) If any person is killed or suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, or in consequence of the occupier of a factory or workshop having neglected to fence any vat, pan, or other structure required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, the whole or any part of which may be applied for the benefit of the injured person or his family, or otherwise, as a Secretary of State determines. **Penal compensation to person injured by want of fence to machinery, &c.**

Provided that the occupier of a factory shall not be liable to a fine under this section if an information against him for not fencing the part of the machinery or the vat, pan, or other structure, by which the death or bodily injury was inflicted has been heard and dismissed previous to the time when the death or bodily injury was inflicted.

LXXXIII. Where a child, young person, or woman is employed in a factory or workshop contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night, five pounds for each child, young person, or woman so employed; and where a child, young person, or woman is so employed in a factory or workshop within the meaning of section 16 of this Act, the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night, two pounds for each child, young person, or woman so employed. **Fine for employing children, young persons, and women contrary to the Act.**

A child, young person, or woman who is not allowed time for meals and absence from work as required by this Act, or during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act.

* * * * *

LXXXV. Every person who forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided), or who gives or signs any such certificate knowing the same to be false in any material particular, or who knowingly utters or makes use of any certificate so forged, counterfeited, or false as aforesaid, or who knowingly utters or makes use of as applying to any person a certificate which does not so apply, or who personates any person named in a certificate, or who wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour. **Forgery of certificates, false entries, and declarations.**

Every person who wilfully makes a false entry in any register, notice, certificate, or document required by this Act to be kept or served, or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

LXXXVI. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine, has, in fact, been committed by some agent, servant, workman, or other person, such agent, servant, workman, or other person shall be liable to the same fine as if he were the occupier. **Fine on person committing offence for which occupier is liable.**

LXXXVII. Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to **Power of occupier to exempt himself from**

(d) In case of a second conviction for the same offence within two years, the fine must not be less than 1*l.* for each offence. 54 & 55 Vict. c. 75, s. 28, *post*.

(e) This section is here inserted in consequence of its extension to cases of injury to health by 58 & 59 Vict. c. 37, s. 13, *post*. As to its application in tenement factories, see 58 & 59 Vict. c. 37, s. 24 (1) (b), *post*.

Appendix.

fine on conviction of the actual offender.

have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge ; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.(a)

When it is made to appear to the satisfaction of an inspector at the time of discovering the offence, that the occupier of the factory or workshop had used all due diligence to enforce the execution of this Act, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the occupier, and in contravention of his orders, then the inspector shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the occupier of the factory or workshop.

Restraint on cumulative fines.

LXXXVIII. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

- (a.) Where the repetition of the offence occurs after an information has been laid for the previous offence, or
- (b.) Where the offence is one of employing two or more children, young persons, or women contrary to the provisions of this Act.

(5.) Legal Proceedings.

Prosecution of offences and recovery and application of fines.

LXXXIX. All offences under this Act shall be prosecuted, and all fines under this Act, shall be recovered, on summary conviction, before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

All fines imposed in pursuance of this Act shall, save as otherwise expressly provided by this Act, be paid into the Exchequer.(b)

The court of summary jurisdiction, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of that factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of such court.(c)

Appeal to quarter sessions.

XC. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom ; subject, in England, to the conditions and regulations following :—

- (1.) The appeal shall be made to the next practicable court of general or quarter sessions.(d)

* * * * *

(a) As to the liability of the actual offender, if convicted, to pay costs, see 58 & 59 Vict. c. 37, s. 50, *post*.

(b) See section 82, *ante*, as to penal compensation.

(c) As to the right of an inspector to conduct proceedings before a court of summary jurisdiction, see 58 & 59 Vict. c. 37, s. 51.

(d) The remainder of this section is repealed as to England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

XCI. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act : **Appendix.**

(1.) (e)

* * * * *

(4.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more :

(5.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or the title of the firm by which the occupier employing persons in the factory or workshop is usually known :

(6.) A conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by *certiorari* or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

Limitation of time and general provisions as to summary proceedings.

XCII. (f) If a person is found in a factory, except at meal times, or while all the machinery of the factory is stopped, or for the sole purpose of bringing food to the persons employed in the factory between the hours of four and five o'clock in the afternoon, such person shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory. **Evidence in summary proceedings.**

Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory within the meaning of this enactment ; and this enactment shall not apply to a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply.

Where a child or young person is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the child or young person is not of that age.

A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of such conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, upon the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

PART IV.

GENERAL DEFINITIONS, &C.

* * * * *

XCVI. In this Act, unless the context otherwise requires,—

The expression "child" means a person under the age of fourteen years :

The expression "young person" means a person of the age of fourteen years and under the age of eighteen years :

The expression "woman" means a woman of eighteen years of age and upwards :

The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages, of a child or young person :

* * * * *

General definitions.

"Child."

"Young person."

"Woman."

"Parent."

(e) Sub-section (1) of this section was repealed by 54 & 55 Vict. c. 75, *post*, and sub-sections (2) and (3) and part of (6) were repealed as to England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

(f) The provisions of this section are extended to workshops by 54 & 55 Vict. c. 75, s. 30, *post*. As to evidence as to failure to limewash, see 58 & 59 Vict. c. 37, s. 43, *post*. And as to the competency of the defendant to give evidence on his own behalf, see section 49 of the same Act, *post*.

Appendix.	The expression "sanitary authority" means an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and any commissioners, board, or vestry in the metropolis having the like powers as such urban sanitary authority :
"Sanitary authority." 38 & 39 Vict. c. 55.	The expression "person" includes a body of persons corporate or unincorporate :
"Person."	The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night :
"Week."	The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning :
"Night."	The expression "prescribed" means prescribed for the time being by a Secretary of State :
"Prescribed."	* * * * *
"Mill gearing."	The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process. The factories and workshops named in the Fourth Schedule to this Act are in this Act referred to by the names therein assigned to them.
	* * * * *
Application to factories and workshops of 38 & 39 Vict. c. 55.	CI. The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to a factory or <i>workshop</i> (a) which is subject to the provisions of this Act relating to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, and workplace. It is hereby declared that the Public Health Act, 1875, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as it applies to buildings where more than twenty are employed.
Construction of enactments, &c., referring to repeal Acts.	CII. Any enactment or document referring to the Acts repealed by this Act, or any of them, or to any enactment thereof, shall be construed to refer to this Act and to the corresponding enactment thereof.
	* * * * *

THE PUBLIC WORKS LOANS ACT, 1878.

(41 & 42 VICT. CAP. 18.)(b)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and by the Commissioners of Public Works in Ireland, and to authorise the former Commissioners to compound and cancel certain Loans and Interest, and to amend the Public Works Loans Act, 1875. [27th May, 1878.]

Short title.

I. This Act may be cited as the Public Works Loans Act, 1878.

(a) These words were repealed by 54 & 55 Vict. c. 75, *post* ; but see now 58 & 59 Vict. c. 37, s. 1, *post*.

(b) See 38 & 39 Vict. c. 89, *ante*, p. 1038. The preamble to this Act and the recital to section 4 have been repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.

PART I.

Appendix.

Public Works Loan Commissioners.

II.(c)

III.(d)

IV.

Where upon any examination made in pursuance of section thirty-six of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other, and further, if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct a sum equal to the amount so misapplied to be raised within the time and out of the fund or rate named in the order and to be applied as directed by the above-mentioned order.(e)

Amendment of 38 & 39 Vict. c. 89, s. 36, as to examination into proper application of loan advanced on rates. 38 & 39 Vict. c. 89.

An order made by the Local Government Board in pursuance of this section may be enforced by writ of *mandamus*.

V.(f)

VI. So much of any Act as requires the Public Works Loan Commissioners to take in respect of any loan advanced by them under that Act in preference to any other securities, all or such one or more of the securities issuable under the Local Loans Act, 1875, as they may prefer, is hereby repealed, and the security for any such loan may be given and taken under and pursuant to the Public Works Loans Act, 1875.

Repeal of obligation of the Public Works Loan Commissioners to take securities under 38 & 39 Vict. c. 83. 38 & 39 Vict. c. 89.

(g)* * * * *

THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

(41 & 42 VICT. CAP. 77.)(h)

An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes. [16th August, 1878.]

* * * * *

Preliminary,

I. This Act may be recited as the Highways and Locomotives (Amendment) Act, 1878.

II. This Act shall not apply to Scotland or Ireland; and, save as is by this Act expressly provided, Part I. of this Act shall not apply to the Isle of Wight; (i) nor to

Application of Act.

(c) This section was repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(d) This section relates to the composition of debt due from the Epping Rural Sanitary Authority.

(e) The unapplied balance may now be applied to any purpose to which moneys borrowed on the security of the rate are properly applicable. 44 & 45 Vict. c. 38, s. 9.

(f) Section 5 was repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(g) Part II. related to Ireland only, and was repealed by the Statute Law Revision Act 1883 (46 & 47 Vict. c. 39).

(h) The several statutes relating to highways are not included in this Work. This Act, however, contains the provisions as to main roads, which are referred to in the Local Government Act, 1888, s. 11, *ante*, p. 490. The preamble to this Act is repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.

(i) See sections 13 and 27, *post*. See also 51 & 52 Vict. c. 41, s. 12, *ante*, p. 497.

Appendix. any part of the metropolis; nor to any part of a county to which the Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better Management and Control of the Highways in South Wales,"(a) extends.

PART I.

AMENDMENT OF HIGHWAY LAW.

Highway Districts.(b)

* * * * *

Power of county authority to enforce performance of duty by defaulting highway authority.

X. Where complaint is made to the county authority(c) that the highway authority of any highway area within their jurisdiction has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority,(c) if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority, in the matter of such complaint.(d)

If such duty is not performed by the time limited in the order, and the highway authority fail to show to the county authority(c) sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority(c) may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority(c) for the repair of a highway on a highway authority alleged to be in default, if such authority, within ten days after service on them of the order of the county authority,(c) give notice to the clerk of the peace that they decline to comply with the requisitions of such order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway.(e)

If the county authority(c) decide to submit the question to a jury they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair

(a) See, however, 51 & 52 Vict. c. 41, s. 13, *ante*, p. 498.

(b) Sections 3 to 9 inclusive of this Act have become inoperative by reason of the provisions of section 25 of the Local Government Act, 1894, *ante*, p. 723. by which the rural district councils are made the highway authorities in their districts.

(c) The county authority are now the county council. See note (a), p. 1100, *post*.

(d) This order may be made notwithstanding a *bond fide* dispute as to whether the road in question is a highway at all. *Reg. v. Cheshire JJ.*, 50 L. T. (N.S.) 483; 48 J. P. 262. But the county authority are not bound to make the order if they are satisfied that the road is not a highway. *Ex parte Johnson*, 50 J. P. 313.

(e) If the county authority do not cancel or modify their order they are bound to order an indictment, though the fact that the road is a highway as well as the liability to repair is in dispute. See *Reg. v. Cheshire JJ.*, 50 L. T. (N.S.) 483; 48 J. P. 262; and *Reg. v. Bedfordshire County Council*, "The Times," 4th February, 1895, where a rule for *mandamus* to the county authority to prefer an indictment was made absolute without opposition in a case where the county authority refused to cancel or modify their order after notice from the highway authority that they declined to comply with such order until their liability had been determined by a jury, whereupon the county council had resolved not to direct an indictment to be preferred.

the highway.(f) Until the trial of the indictment is concluded, the order of the county authority(c) shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority(c) shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority(c) shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority(c) shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds applicable to the maintenance of such roads.

XI.(g)

* * * * *

Main Roads.(h)

XIII. For the purposes of this Act and subject to its provisions, any road which has, within the period between the thirty-first day of December, one thousand eight hundred and seventy,(i) and the date of the passing of this Act, ceased to be a turnpike road,(k) and any road which, being at the time of the passing of this Act

Appendix.

Disturnpiked roads to become main roads, and half the expense of maintenance to be contributed out of county rate.

(f) Although a highway authority cannot be indicted at common law for non-repair of a highway (*Reg. v. Poole (Mayor, &c., of)*, 19 Q. B. D. 602; 56 L. J. M. C. 131; 57 L. T. (N.S.) 485; 36 W. R. 239; 52 J. P. 84; 16 Cox C. C. 323), yet they may be indicted if proceedings are taken under this section. *Reg. v. Wakefield (Mayor, &c., of)*, 20 Q. B. D. 810; 57 L. J. M. C. 52; 36 W. R. 911; 52 J. P. 422.

(g) Section 11 has become inoperative by the passing of section 25 of the Local Government Act, 1894, *ante*, p. 723, and section 12 is repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(h) See the provisions of the Local Government Act, 1888, s. 11, *ante*, p. 490, as to main roads.

(i) A provision in Turnpike Acts coming into operation before the 31st December, 1870, that turnpike trustees shall not spend money or levy toll upon certain portions of turnpike roads does not prevent such portions of the roads from being still turnpike roads on the 31st December, 1870, within the meaning of section 13 of the Highways and Locomotives (Amendment) Act, 1878. So as to an agreement under the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 41, made before the 31st December, 1870, between turnpike trustees and a corporation, under which the turnpikes upon certain portions of turnpike roads were removed, and the repair of such portions was undertaken by the corporation. *West Riding J.J. v. Reg.*, 8 App. Cas. 781; 53 L. J. M. C. 41; 49 L. T. (N.S.) 786; 32 W. R. 253; 48 J. P. 228.

(k) The corporation of the borough of Rochdale was the highway authority of the Rochdale highway area. Under sections 47—50 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), the obligation to repair all public highways within the area of the "town" was imposed upon the corporation, and the turnpike trustees were forbidden to collect any toll or lay out any money on any road within that area. By a local Act of 1872 the boundaries of the borough were enlarged, and all the provisions of the Acts relating to the "town" were made applicable to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough, and within the operation of the Towns Improvement Clauses Act, 1847:—Held, reversing the decision of the Court of Appeal, that these further portions being only parts of turnpike roads, had not "ceased to be turnpike roads," and were not to be deemed to be "main roads" within the above section. *Lancashire J.J. v. Rochdale (Mayor of)*, 8 App. Cas. 494; 53 L. J. M. C. 5; 49 L. T. (N.S.) 368; 32 W. R. 65; 48 J. P. 20. In 1855 a portion of a turnpike road was included in an improvement district under a local Act incorporating the Towns Improvement Clauses Act, 1847. Thereupon, by virtue of sections 47—51 of the latter Act the maintenance of this portion of the road became vested in the improvement commissioners, and the turnpike trustees ceased to have power to collect toll or lay out money upon it. In 1877 the turnpike trust expired. The commissioners were the highway authority for the district, and the district was a highway area within the meaning of the above section. It was held that notwithstanding the operation of sections 47—51 of the Towns Improvement Clauses Act, 1847, the road only ceased to be a turnpike road and became a main road within the above section upon the expiration of the turnpike trust.

Appendix. a turnpike road, may afterwards cease to be such, shall be deemed to be a main road. . . .(a)

Description of highway areas.

XIV. The following areas shall be deemed to be highway areas for the purposes of this Act ; (that is to say,)

- (1.) Urban sanitary districts :(b)
- (2.) Highway districts :
- (3.) Highway parishes not included within any highway district or any urban sanitary district.(c)

Power to declare ordinary highway to be a main road.

XV. Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station or otherwise, such highway authority may apply to the county authority(d) for an order declaring such road, as to such parts as aforesaid, to be a main road ; and the county authority,(d) if of opinion that there is probable cause for the application, shall cause the road to be inspected, and if satisfied that it ought to be a main road shall make an order accordingly.

A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours ; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority(d) made within a period of not more than six months after the making of the first-mentioned order.

XVI.(e)

. where it appears to a county authority(d) that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.(f)

The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it ought to cease to be a main road, and become an ordinary high-

Lancashire JJ. v. Newton in Makerfield Improvement Commissioners, 11 App. Cas. 416 ; 53 L. T. (N.S.) 615 ; 35 W. R. 185.

(a) The remainder of this section is repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), having been rendered obsolete by section 11 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), *ante*, p. 490.

(b) This expression as defined by section 38, *post*, did not include quarter sessions boroughs. But these boroughs are now included by virtue of the Local Government Act, 1888, s. 35 (4), *ante*, p. 510, and s. 38 (3), *ante*, p. 512.

(c) Where the quarter sessions had for many years paid half the expenses of maintaining a road under the belief that it was a main road for which they were liable, and it was afterwards discovered that they were not liable by reason of the road being within a borough, it was held that an action would not lie in the name of the justices to recover the sums so paid to the highway authority. *Kent JJ. v. Sandgate Local Board*. 7 T. L. R. 571.

(d) The county council are now the county authority. See note (a), p. 1100, *post*.

(e) Parts of this section were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), and are here omitted. The remainder of the section is amended by section 4 of the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), *post*, whereby it is provided that section 16 of the Highways and Locomotives (Amendment) Act, 1878, shall apply to any part of a main road in any county and so much of that section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, is hereby repealed, but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained.

(f) A road which ceased to be a main road within the period specified by the first paragraph of this section, and had become a main road, there being no application for a provisional order before the 1st February, 1879, is not excluded from the operation of this paragraph, and the Local Government Board has, therefore, jurisdiction to make a provisional order declaring such road an ordinary highway upon an application made subsequently to the 1st February, 1879. *Reg. v. Local Government Board*, 15 Q. B. D. 70 ; 54 L. J. M. C. 104 ; 53 L. T. (N.S.) 194 ; 49 J. P. 580.

way, shall make a [*provisional*] order accordingly [*to be confirmed as hereinafter mentioned*]. **Appendix.**

All expenses incurred in or incidental to the making or confirmation of any order under this section shall be defrayed by the county authority(*d*) applying for such order.

XVII. Where a turnpike road subject to one trust extends into divers counties, such road, for the purposes of this Act, shall be treated as a separate turnpike road in each county through which it passes. Turnpike road in several counties.

XVIII. Every highway authority shall keep, in such form as may be directed by the county authority(*d*) a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and shall forward copies thereof to the county authority(*d*) at such time or times in every year as may be required by the county authority(*d*) and the accounts so kept shall, where the accounts of the highway authority are audited under this Act, or under section two hundred and forty-seven of the Public Health Act, 1875, be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited, shall be subject to such audit as the county authority(*d*) may direct. Accounts of expenses of maintenance of main roads. 38 & 39 Vict. c. 55.

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county authority(*d*) the county authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of the maintenance of main roads by such highway authority for the year in which such default occurs.

XIX. Where a highway district is situate in more than one county, the provisions of this Act, with respect to the expenses of the maintenance of main roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county. Highway district situate in more than one county.

XX. Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority(*d*) from time to time, by order, to declare any main road, or part of a main road within their county, to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged(*g*). Repair of main road in certain cases.

Bridges.

XXI. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, and which is certified by the county surveyor or other person appointed in that behalf by the county authority(*d*) to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair(*h*). Certain existing bridges may be accepted by county authority.

XXII. The county authority(*d*) may make such contributions as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected(*i*) after the Contribution out of county rates towards erecting bridges.

(*g*) The meaning of this section has already been explained in the note to 51 & 52 Vict. c. 41, s. 11, sub-section (13).

(*h*) By section 6 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), the county council shall have power to purchase, or take over on terms to be agreed upon, existing bridges not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected.

(*i*) The county authority may for this purpose borrow on mortgage of the county rate under 4 & 5 Vict. c. 49. See 43 & 44 Vict. c. 5.

Appendix.

same has been certified in accordance with the provisions of section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one-half the cost of erecting such bridge.

Extraordinary Traffic.(a)

Power of road
authority to
recover

XXIII. Where by a certificate of their surveyor(b) it appears to the authority, which is liable or has undertaken to repair any highway, whether a main road or

(a) This section refers to traffic or weight which is extraordinary or excessive, having regard to the ordinary user of the road, e.g., to the use of the road by traction engines. *Lord Aveland v. Lucas*, 5 C. P. D. 211, 351; 43 J. P. 830; *Savin v. Oswestry Highway Board*, 44 J. P. 766. See *Tonbridge Highway Board v. Sevenoaks Highway Board*, 33 W. R. 306; 49 J. P. 340, where the use of traction engines and heavy waggons upon an agricultural road for drawing stone from a new quarry was held to be within the section. In some of the earlier cases it was held that either the owner or his contractor may be proceeded against. *Williams v. Davies*, 44 J. P. 347; *Northumberland Whinstone Company v. Alnwick Highway Board*, 44 J. P. 360; and see *Barnet v. Hoo Highway Board*, 46 J. P. 805, where it was also held that this section applied, though the railway company, for whom the work was done, might also be liable under the Railways Clauses Act, 1845, s. 58. A person who let traction engines to move manure for a farmer was held to be liable, in *R. v. Ellis*, 8 Q. B. D. 466; 46 J. P. 295. But in *Lophorn v. Harvey*, 49 J. P. 759, where a contractor employed a sub-contractor to cart stone, and the latter used traction engines which caused injury to the highway, it was held that the sub-contractor alone was liable, as he was under no obligation to cart the stone in any particular manner. And see to the same effect the judgment of Lord BRAMWELL in *Hobbs v. Tunbridge Wells Local Board*, 49 J. P. 679. In *Kent County Council v. Vidler* [1895], 1 Q. B. 448; 64 L. J. Q. B. 77; 72 L. T. (N.S.) 77; 43 W. R. 273; 59 J. P. 548; 11 T. L. R. 155, the appellants were under obligation to supply a large quantity of ballast for the construction of a new line of railway, and in order to fulfil this obligation they contracted with three proprietors of traction engines for the carriage of the ballast along a highway, and it was held that the appellants were the persons by whose order the extraordinary traffic caused by the use of these engines had been conducted. But traffic arising out of a recognised industry in a district is not within this section (*Wallington v. Hoskins*, 6 Q. B. D. 206; 45 J. P. 173; *Lower Strathforth Highway Board v. Hatfield Chase Company*, 57 J. P. 567; M. C. [1893], p. 313), though it is greater than the other traffic on the road, and is not continuous. *Raglan Highway Board v. Monmouth Steam Company*, 46 J. P. 598; and see *Reg. v. Williamson*, 45 J. P. 505. And the carting of materials for building along a road used generally for agricultural traffic was held not to be extraordinary in *Pickering Highway Board v. Barry*, 8 Q. B. D. 59; 46 J. P. 215, but that case was disapproved in *Hill v. Thomas, infra*. The expenses and traffic referred to in this section mean expenses and traffic which are extraordinary with reference to the particular road in question. The appellant was summoned by a highway board to recover expenses incurred by the board in repairing a road in their district during a period of seven years. The expenses were incurred in consequence of stone having been carted by the appellant from a quarry along the road, which was an ordinary country road used for light country traffic and had never been adapted for or made to bear heavier traffic. Stone traffic was a recognised business in the neighbourhood, but was not the ordinary or recognised traffic of the road in question. It was held that under these circumstances the expenses and traffic were extraordinary within the meaning of this section. *Whitebread v. Sevenoaks Highway Board* [1892], 1 Q. B. 8; 61 L. J. M. C. 59; 65 L. T. (N.S.) 855; 56 J. P. 214. Extraordinary traffic within the meaning of this section is not confined to the carriage of unusual materials, nor to carriage for unusual purposes, but it includes all traffic which is so exceptional as regards the ordinary user of the road in respect of quality, quantity, or frequency, as substantially to increase the burden imposed on the road by ordinary traffic, and cause damage and expense thereby beyond what is common. The object of the section is not to prohibit extraordinary traffic, but to throw the expense of causing the damage done thereby on those who cause it. *Hill v. Thomas* [1893], 2 Q. B. 233; 62 L. J. M. C. 161; 69 L. T. (N.S.) 553; 42 W. R. 85; 57 J. P. 628; 4 R. 565. In determining what is extraordinary traffic the justices should not take into account the ordinary traffic of the district, but only that of the particular road in question. *Etherley Grange Coal Company v. Auckland District Highway Board* [1894], 1 Q. B. 37; 69 L. T. (N.S.) 702; 42 W. R. 198; 58 J. P. 102. Proceedings under this section are in the nature of a personal tort, and cannot be taken against the executor of the person by whom the traffic was conducted. *Story v. Sheard* [1892], 2 Q. B. 515; 61 L. J. M. C. 178; 67 L. T. (N.S.) 423; 41 W. R. 31; 56 J. P. 760. The six months within which proceedings must be taken under this section runs from the surveyor's certificate, and not from the demand of payment. *Pool and Forden Highway Board v. Gunning*, 51 L. J. M. C. 49; 46 J. P. 708;

not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Discontinuance of unnecessary Highways.

XXIV. If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in this section referred to "as the applicant authority") may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

Unnecessary highways may be declared not repairable at the public expense.

On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate.

Public notice of the time and place appointed for hearing a case under this section shall be given by the applicant authority as follows: (that is to say,)

- (1.) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers, in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing; and
- (2.) By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter

but see *White v. Colston*, 46 J. P. 565. The certificate may include other roads besides the road which is the subject of the particular proceedings. *Wirral Highway Board v. Newell* [1895], 1 Q. B. 827; 64 L. J. M. C. 181; 72 L. T. (N.S.) 535; 43 W. R. 328; 59 J. P. 183; 11 T. L. R. 273.

(b) J. was not appointed under seal to be district surveyor, but only by minute of the board signed by their chairman, but not countersigned by the clerk of the board. L. being summoned for damage under this section, set up the defence that the appointment of J. and his certificate and the proceedings were void, it was held that as J. had acted *de facto* as surveyor, the objection could not be sustained. *Lancaster v. Harlech Highway Board*, 52 J. P. 805.

Appendix. sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

- Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions.(a)

Appointment of Surveyors in certain Parishes.

XXV.(b)

Bye-laws by County Authority.(c)

Power of
county autho-
rity to make
bye-laws.

XXVI. A county authority(c) may from time to time make, with respect to all or any main roads or other highways within any highway area in their county, and when made alter or repeal bye-laws for all or any of the purposes following; (that is to say,)

- (1.) For prohibiting or regulating the use of any waggon, wain, cart, or carriage drawn by animal power and having wheels of which the fellys or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of, wheels of such waggon, wain, cart, or carriage, as may be specified in such bye-laws; and
- (2.) For prohibiting or regulating the use of any waggon, wain, cart, or other carriage drawn by animal power not having the nails on its wheels counter-sunk in such manner as may be specified in such bye-laws, or having on its wheels bars or other projections forbidden by such bye-laws; and
- (3.) For prohibiting or regulating the locking of the wheel of any waggon, wain, cart, or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and
- (4.) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; and
- (5.) [For regulating the use of bicycles.](d)

Fines to be recovered summarily may be imposed by any such bye-laws on persons breaking any bye-law made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the bye-laws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

Saving for Minerals.

To whom
minerals under
disturnpiked
roads to
belong.
11 & 12 Vict.
c. 63.
38 & 39 Vict.
c. 55.

XXVII. Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875,(e) all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of

(a) This appeal will still be open to quarter sessions, for the Local Government Act, 1888, s. 3 (viii.), only transferred to the county council the powers of quarter sessions as the county authority. See also section 78 (2) of that Act.

(b) This section has become inoperative by reason of section 25 of the Local Government Act, 1894, ante, p. 723, by which the rural district councils are made the highway authorities in their districts.

(c) The county council are now the county authority. A series of model bye-laws under this section has been issued by the Local Government Board.

(d) The provisions of this sub-section were repealed by section 85 of the Local Government Act, 1894, ante, p. 523. That section contains general regulations for bicycles, tricycles, &c.

(e) Ante, p. 169.

working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway.(f)

Appendix.

This section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better management and control of the highways in South Wales."(g)

PART II.

AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

XXVIII.(h) It shall not be lawful to use on any turnpike road or highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say)—

Weight of locomotives and construction of wheels.
24 & 25 Vict. c. 70.
28 & 29 Vict. c. 83.

- (1) A locomotive not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons : and
- (2) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive unless the diameter of such wheels shall exceed five feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such cases the width of such tires shall not be less than fourteen inches ; and
- (3) A locomotive shall not exceed nine feet in width or fourteen tons in weight, except as hereinafter provided ; and
- (4) The driving wheels of a locomotive shall be cylindrical and smooth soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches.(i)

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds : Provided that the mayor, aldermen, and commons in the City of London, and the Metropolitan Board of Works in the metropolis, exclusive of the City of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorise such locomotive to be used on any turnpike road or highway within the areas respectively above-mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a locomotive used contrary to the provisions of sub-section two of this section shall not be deemed guilty of an offence

(f) This provision seems to have been inserted *ex abundanti cautela*. See per COTTON, L.J., in *Rolls v. St. George's, Southwark (Vestry of)*, 14 Ch. D. at p. 799. A railway company constructed a railway on the level across a highway in the district of which the relators were the urban sanitary authority. Subsequently the defendants worked coal mines in a proper and usual manner beneath the highway, with the result that a gradual and uniform subsidence of the highway, railway, and surrounding land to the extent of about ten feet vertically took place. No actual damage was done to the highway thereby, nor was it rendered less convenient, but the railway company placed ballast under their line so as to maintain it at its original level, thus forming an embankment obstructing the use of the highway :—Held, in an action against the defendants for damages for the obstruction to the highway, that the defendants were not liable. And per COLLINS, J., that assuming the highway to be vested in the relators under section 149 of the Public Health Act, 1875, they were entitled to judgment with nominal damages for the injury to their proprietary right. *Attorney-General v. Conduit Colliery Company* [1895], 1 Q. B. 301 ; 71 L. T. (N.S.) 771 ; 43 W. R. 366 ; 59 J. P. 70 ; 11 T. L. R. 57.

(g) See the note to section 13, *ante*.

(h) The commencement of this section is repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(i) See *Stringer v. Sykes*, 2 Ex. D. 240 ; 46 L. J. M. C. 137 ; 36 L. T. (N.S.) 152.

Appendix.

Amendment
of 28 & 29 Vict.
c. 83, s. 3.

under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act, and that the tires of the wheels thereof are not less than nine inches in width.(a)

XXIX. The paragraph numbered "secondly" of section three of the Locomotive Act, 1865, is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted; namely,

"Secondly, one of such persons, while the locomotive is in motion, shall precede by at least twenty yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same."(b)

Steam locomotives to be constructed so as to consume their smoke.
24 & 25 Vict.
c. 70.

XXX.(c) Every locomotive used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such turnpike road or highway.(d)

Power to local authorities to make orders as to hours during which locomotives may pass over roads.
28 & 29 Vict.
c. 83.

XXXI.(c) The mayor, aldermen, and commons in the City of London, and the Metropolitan Board of Works in the metropolis, exclusive of the City of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may make bye-laws as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respectively above-mentioned, the hours being in all cases consecutive hours and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding five pounds.

Power of county authority to license locomotives.

XXXII. A county authority may from time to time make, alter, and repeal bye-laws for granting annual licenses to locomotives used within their county, and the fee (not exceeding ten pounds) to be paid in respect of each license; and the owner of any locomotive for which a license is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law shall be liable to a fine not exceeding forty shillings for every day on which the same is so used.

All fees received under this section shall be carried to and applied as part of the county rate.

This section shall not apply to any locomotive used solely for agricultural purposes.(e)

(a) It is to be observed that this section does not in any way protect a person who uses a locomotive constructed as here provided and properly managed, having regard to the provisions of the Locomotive Acts, if damage results from its use. *Powell v. Fall*, 5 Q. B. D. 597; 49 L. J. Q. B. 428; 43 L. T. (N.S.) 562. And see *Galer v. Rawson*, W. N. (1889), 180; 6 T. L. R. 17; *Bantwick v. Rogers*, 7 T. L. R. 542; *Eyre v. Paddington (Vestry of)*, "Times," 5th June, 1891. As to the liability to be indicted for using a traction engine on a highway, see *Reg. v. Chittenden*, 49 J. P. 503. The owner of locomotive who has let it on hire is not liable for injuries caused by the negligence of the hirer, though his name is on it. *Smith v. Bayley* [1891], 2 Q. B. 403; 60 L. J. Q. B. 779; 65 L. T. (N.S.) 330; 40 W. R. 28; 56 J. P. 116.

(b) As to the liability of the owner in case horses are frightened and damage themselves or carriages, &c., see *Jeffery v. St. Pancras (Vestry of)*, 63 L. J. Q. B. 618.

(c) See note (h), p. 1097.

(d) The burden of proving that a locomotive does consume its own smoke is on the defendant. *Pitt Rivers v. Glasse*, 55 J. P. 663; 7 T. L. R. 438.

(e) M. was the owner of a locomotive traction engine, which was drawing a threshing machine used on one farm along the highway to another farm, where it was also to be used. It was held that the engine was exempt under this proviso. *Murch v. Baker*, 55 J. P. 583. A locomotive which is sometimes let out by its owner to farmers for the purpose of carrying straw and manure for use in farming operations, and which is sometimes used by the owner himself for the purpose of carrying for hire straw and manure to be used exclusively on farms, and is not used for any other purpose, is within the exemption in the above section as being "a locomotive used solely for agricultural purposes," and may be so used without a license from the county authority. *Ellis and Company v. Hulse*, 23 Q. B. D. 24; 58 L. J.

XXXIII. This part of this Act shall remain in force so long only as the Locomotive Act, 1865, continues in force.(f)

Appendix.

Duration of
Part II. of Act.
23 & 29 Vict.
c. 85.

PART III.

Procedure and Definitions.

XXXIV. It shall be lawful for the Local Government Board to submit any provisional order made by them under this Act to Parliament for confirmation, and without such confirmation a provisional order shall not be of any validity.(g)

Confirmation
of provisional
order.

XXXV. A bye-law made under this Act, and any alteration made therein, and any repeal of a bye-law, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

Confirmation
of bye-laws.

A bye-law made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed, until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

XXXVI. All offences, fines, and expenses under this Act, or any bye-law made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.(h)

Recovery of
penalties and
expenses.

* * * * *

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

XXXVII. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom . . . to the next practicable court of quarter sessions(i)

Form of appeal
to quarter
sessions.

XXXVIII. In this Act—

"County" has the same meaning as it has in the Highway Acts, 1862 and 1864,(k) except that every liberty(l) not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes

Interpretation.
25 & 26 Vict.
c. 61.
27 & 28 Vict.
c. 101.

M. C. 91; 60 L. T. (N.S.) 836; 53 J. P. 548. But a steam engine authorised by statute to be used on a tramway is not a locomotive to which this section applies. *Bell v. Stockton Tramways Company*, 51 J. P. 804; 3 T. L. R. 511.

(f) That Act is continued by 59 Vict. sess. 2, c. 1.

(g) See note to section 16, *ante*, p. 1092.

(h) The definition of this expression here following is now repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See now the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 13 (10)).

(i) The remainder of this section is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

(k) Although for the purposes of the Highway Act, 1862, boroughs are not to be considered parts of counties, yet for the purposes of section 13 it was held that the word "county" was used geographically, and so, therefore, as to include a borough within the county. *Over Darwen (Mayor of) v. Lancashire J.L.*, 15 Q. B. D. 20; 54 L. J. M. C. 51; 51 L. T. (N.S.) 739; 48 J. P. 437.

(l) The recorder of such a liberty is a county authority so as to be able to hear an application under section 15, *ante*, to have certain roads declared main roads. *Reg. v. Dover (Recorder of)*, 32 W. R. 876; 48 J. P. 420.

Appendix.

of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county :

“County authority” means the justices of a county in general or quarter sessions assembled : (a)

“Borough” means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the Regulation of Municipal Corporations in England and Wales,” and the Acts amending the same : (b)

“Highway district” means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts :

“Highway board” means the highway board having jurisdiction within a highway district :

“Highway parish” means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts :

“Highway authority” means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties : (c)

“Rural sanitary district” and “rural sanitary authority” mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875 : (d)

“Urban sanitary district” and “urban sanitary authority” mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875, (e) except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, and where part of a parish is included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act :

“The metropolis” means the parishes and places mentioned in the Schedules A., B., and C., annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided ; also the city of London and the liberties of the said city :

“Quarter sessions” includes general sessions :

“Petty sessional division” means any division for the holding a special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of His late Majesty King George the Fourth, chapter forty-three, or any Act amending the same ; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act ; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighteen, intituled “An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing Places for the holding of such Petty Session in Counties and Boroughs :”

“Locomotive” means a locomotive propelled by steam or by other than animal power : (f)

“Person” includes a body of persons corporate or unincorporate.

(a) The powers and duties of the quarter sessions as the county authority are now transferred to the county council by the Local Government Act, 1888, s. 3 (viii.).

(b) Now the Municipal Corporations Act, 1882. See section 242 of that Act.

(c) By section 25 of the Local Government Act, 1894, *ante*, p. 723, the rural district councils are now constituted the highway authorities for their districts.

(d) See *ante*, p. 27.

(e) *Ante*, p. 24.

(f) This includes a tricycle capable of being propelled by steam. *Parkyn v. Priest*, 7 Q. B. D. 313 ; 50 L. J. M. C. 148 ; 30 W. R. 13 ; 45 J. P. 751. But not a steam tram car used by virtue of statutory powers. *Bell v. Stockton Steam Tramways Company*, 51 J. P. 804 ; 3 T. L. R. 511 ; and see the cases cited in the notes to section 32, *ante*, p. 1098.

Appendix.

THE DISTRICT AUDITORS ACT, 1879.

(42 VICT. CAP. 6.)(g)

An Act to amend the Law with respect to District Auditors.

[28th March, 1879.]

* * * * *

I. This Act may be cited as the District Auditors Act, 1879.

Short title.

II.(h) The whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor(i) a stamp duty for the use of Her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned.

Provision as to contribution by Treasury and out of local rate for payment of district auditors.

III. Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars,(k) one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.

Financial statement with stamped certificate of district auditor.
29 & 30 Vict. c. 113, s. 6.

He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the board in pursuance of the Local Taxation Returns Acts, 1860 and 1877.

23 & 24 Vict. c. 51.
40 & 41 Vict. c. 66.

IV. The Local Government Board may from time to time appoint such number of district auditors as they may, with the sanction of the Treasury, think necessary for the performance of the duties of auditing the accounts which are for the time being by law subject to be audited by district auditors, and may from time to time remove such auditors.

Appointment and districts of district auditors.

The board may from time to time assign to district auditors their duties, and the districts in which such auditors respectively are to act, and may from time to time change wholly or in part such duties or districts; and every district so assigned to a district auditor, whether originally or upon any change, shall be deemed to be an audit district within the meaning of any enactment relating to district auditors or their districts, and the auditor to whom any district is assigned shall be deemed to be the district auditor for that district.

The board may also, with the consent of the Treasury, appoint from time to time a person or persons, either temporarily or otherwise, to assist a district auditor in the performance of his duties, and any person so appointed shall, subject to any exceptions made by the terms of his appointment, have the same powers and duties, and be subject to the same obligations as the district auditor whom he is appointed to assist.

(g) See the Public Health Act, 1875, ss. 247, 248, *ante*, p. 326; also 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113, *ante*. The preamble of this Act reciting section 24 of the Poor Law Amendment Act, 1868, was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). As to the omission of the clause of enactment see section 4 of the same Act.

(h) Words at the commencement of this section were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(i) This will include all sanitary authorities. See section 8, *post*.

(k) The orders now regulating the form of the financial statements of sanitary authorities are set out in Appendix II., *post*.

Appendix.

The board, with the like consent, may assign to a person so appointed such salary or remuneration and such sum for his expenses as may seem fit, and such salary, remuneration, and expenses shall be paid out of moneys provided by Parliament.

Regulations
as to audit.

V. Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834.(a)

4 & 5 Will. 4,
c. 76.

Stamp duties
under Inland
Revenue.

VI. The duties charged under this Act shall be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly; and such duties may, if the commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act.

Failure to
submit financial
statement.

VII. If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer shall be liable to a fine not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice.(b)

Definitions.

VIII. In this Act,—

The expression "local rate" means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression "local authority" means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor.

The expression "prescribed" means prescribed from time to time by the Local Government Board.(c)

* * * * *

Repeal of Acts.

XI.

(2.) Any auditor appointed in pursuance of any enactment hereby repealed shall (save as may be prescribed) have the same powers and duties and be subject to the same obligation as if such enactment had not been repealed.

Saving of
certain fees
and expenses.

XII. Nothing in this Act shall prevent a district auditor from recovering . . .
. . . any expenses incurred, or which he may hereafter incur, in any proceedings which he is authorised or required to take or defend under the statutes in that behalf.

(a) For these orders reference should be made to Appendix II., *post*.

(b) By whom? Probably only by the Crown. *Bradlaugh v. Clarke*, 8 App. Cas. 354; 52 L. J. Q. B. 505; 48 L. T. (N.S.) 681; 32 W. R. 677; 47 J. P. 405.

(c) The remainder of this section, and sections 9, 10, and parts of 11 and 12 and the Second Schedule were repealed by the Statute Law Revision Act, 1894 (37 & 58 Vict. c. 56).

Appendix.

Section II.

FIRST SCHEDULE.(d)

Scale of Stamp Duties payable by Local Authorities.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under 20 <i>l</i> .	5 <i>s</i> .
20 <i>l</i> . and under 50 <i>l</i> .	10 <i>s</i> .
50 <i>l</i> . and under 100 <i>l</i> .	1 <i>l</i> .
100 <i>l</i> . and under 500 <i>l</i> .	2 <i>l</i> .
500 <i>l</i> . and under 1,000 <i>l</i> .	3 <i>l</i> .
1,000 <i>l</i> . and under 2,500 <i>l</i> .	4 <i>l</i> .
2,500 <i>l</i> . and under 5,000 <i>l</i> .	5 <i>l</i> .
5,000 <i>l</i> . and under 10,000 <i>l</i> .	10 <i>l</i> .
10,000 <i>l</i> . and under 20,000 <i>l</i> .	15 <i>l</i> .
20,000 <i>l</i> . and under 50,000 <i>l</i> .	20 <i>l</i> .
50,000 <i>l</i> . and under 100,000 <i>l</i> .	30 <i>l</i> .
100,000 <i>l</i> . and upwards	40 <i>l</i> .

For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

THE SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

(42 & 43 VICT. CAP. 30.)*(e)**An Act to amend the Sale of Food and Drugs Act, 1875.*

[21st July, 1879.]

WHEREAS conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879. Short title.

II. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.*(f)* In sale of adulterated articles no defence to allege purchase for analysis.

III. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direc- Officer, inspector, or constable may

(d) The provisions of this Act were applied to county councils by the Local Government Act, 1888, s. 71 (3), and this schedule was modified so far as relates to expenditure amounting to 100,000*l*. and upwards, as follows:—Where the total expenditure is above 100,000*l*. and under 150,000*l*., 50*l*.; 150,000*l*. and under 200,000*l*., 60*l*.; 200,000*l*. and upwards 15*l*. in addition for every 50,000*l*., or part thereof.

(e) See 38 & 39 Vict. c. 63, *ante*, p. 1007.

(f) See 38 & 39 Vict. c. 63, s. 6, *ante*, p. 1008. The last clause of this section was passed to meet the decision in *Davidson v. Macleod*, 42 J. P. 43, 50.

Appendix.

obtain a sample of milk at the place of delivery to submit to analyst.

tion and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act.(a)

Penalty for refusal to give milk for analysis.

IV. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.

Extension of Act as to sale in streets, &c.

V. Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

Reduction allowed to the extent of 25 degrees under proof for brandy, whiskey, or rum, and 35 degrees for gin.

VI. In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated, otherwise than by the admixture of water, it shall be a good defence to prove that

(a) It is not necessary to state the intention and to offer to divide the sample of milk thus taken, as required by 38 & 39 Vict. c. 63, s. 14. *Rouch v. Hall*, ante, p. 1012; *Chappell v. Emson*, 48 J. P. 200.

An inspector having taken a sample of milk, under section 3, divided it, retained one part, and submitted the other part to be analysed. It was held, following *Rouch v. Hall*, that he was not bound to submit for analysis the whole of the sample taken by him. *Rolfe v. Thompson* [1892], 2 Q. B. 196; 56 J. P. 425. And see *Harris v. Williams*, the facts of which are stated, ante, p. 1012.

The appellant, who lived at C., contracted with a dairy company for the sale to them of the milk from his dairy, to be delivered at London, or at such other station as the purchasers should from time to time appoint; the carriage of the milk to C. to be paid by the purchasers. The purchasers appointed H. as a station for the delivery of milk under the contract. The appellant consigned milk from C. to the purchasers at H.; immediately on its arrival at the latter station, and before possession was taken of it by the purchasers, a sample was taken by the respondent, which, upon analysis, was found to be adulterated by the addition of water. It was held that, notwithstanding the provision for payment of the carriage by the purchasers, H. was the place of delivery of the milk to the purchasers within the meaning of the section; and the appellant was, therefore, rightly convicted of an offence under the Act. *Filshie v. Evington* [1892], 2 Q. B. 200; 66 L. T. (N.S.) 199; 40 W. R. 380; 56 J. P. 312; 17 Cox C. C. 481. And see *Lush v. Wilson*, 54 J. P. 73, a decision by the Recorder of Reading as to the place of delivery.

The appellant contracted to supply milk to a workhouse at a certain price; by the contract the milk was to contain a certain percentage of cream; it was to be tested on each delivery, and a reduction was to be made in the price in respect of any deficiency of cream. While the daily supply, contained in five cans, was being delivered at the workhouse, the respondent, acting under the above section, procured a sample from each of the five cans; there being a large deficiency of cream in two of the samples the respondent subsequently laid two separate informations against the appellant, in respect of those two samples, under section 9 of the principal Act. The justices convicted the appellant in a separate penalty upon each information. It was held that the procuring of each sample was a separate transaction; that the appellant had committed a separate offence as to each can in respect of which an information was laid; that the separate informations were therefore properly laid, and the convictions were right. It was also held that the provisions in the contract as to deficiency of cream were immaterial in the determination of the question whether the appellant had committed an offence under the Act. *Pecitt v. Walsh* [1892], 2 Q. B. 304; 39 W. R. 525; 65 L. T. (N.S.) 82; 60 L. J. M. C. 143; 55 J. P. 726; 17 Cox C. C. 322.

The defendant may be convicted upon a summons alleging an offence under section 6 of the principal Act, although it is proved that there was a seizure under this section, unless he applies for an amendment or adjournment under section 1 of the Summary Jurisdiction Act, 1848. *Hiatt v. Ward*, 70 L. T. (N.S.) 374; 58 J. P. 461; 10 T. L. R. 284.

such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whiskey, or rum, or thirty-five degrees under proof for gin.(b) **Appendix.**

VII. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act. Extension of meaning of "county."

VIII. [*Quarter sessions boroughs not to contribute to county analyst.*](c)

IX. The town council of any borough, having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force.(d) Provision for boroughs with separate police.

X. In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.(e) Special provision as to time for proceedings.

(b) This section was passed in consequence of the decisions in *Pashler v. Stearnitt*, 35 L. T. (N.S.) 862; 41 J. P. 136; *Webb v. Knight*, 2 Q. B. D. 530; 46 L. J. M. C. 264; 41 J. P. 726.

Where the appellant sold to the respondent gin more than thirty-five degrees under proof, but at the time of sale brought to his knowledge a printed notice hanging up in the room to the effect that all spirits were sold "as diluted spirits, no alcoholic strength guaranteed," it was held that this section did not deprive the appellant of his ground of defence under 38 & 39 Vict. c. 63, s. 6, that the sale was not to the prejudice of the purchaser. *Gage v. Elsey*, 10 Q. B. D. 518; 32 L. J. M. C. 44; 31 W. R. 501; 47 J. P. 391. See *Newby v. Sims*, ante, p. 1013; *Morris v. Johnson*; *Morris v. Askeu*, ante, p. 1010.

(c) This section is repealed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), as to boroughs to which that Act applies, and is altogether repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), being superseded by sections 31—39 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), ante, p. 508.

(d) See 38 & 39 Vict. c. 63, s. 29, ante, p. 1016. In a borough having a population of less than 10,000 the power of appointing analysts is transferred to the county council by section 39 of the Local Government Act, 1888, ante, p. 513. By section 1 of the Weights and Measures Act, 1893 (56 & 57 Vict. c. 19), when the amount received by the county council from the execution of the Weights and Measures Acts, 1878 to 1892, is in excess of the expenditure thereupon, a proportionate part of such excess amount shall be deducted from any sum due to such borough as is mentioned in section 1 of the Weights and Measures Act, 1893, as a recoupment under the Contagious Diseases (Animals) Acts (now see the Diseases of Animals Act, 1894,) or the Sale of Food and Drugs Acts respectively.

(e) A complaint having been made to two justices of a borough against the appellant for an offence under section 6 of the principal Act, a summons was signed and issued by another justice, who had not heard the complaint, and was served on the appellant. The appellant thereupon appeared before the stipendiary magistrate of the borough, but objected that the summons was invalid, and the magistrate had no jurisdiction to hear the case. The magistrate being of opinion that the defect, if any, in the summons was cured by the appearance of the appellant, heard the case and convicted him. It was held that the summons, having been signed and issued by a justice who had not heard the complaint, was invalid; that the defect was not cured by the appearance of the appellant, as he appeared under protest; that the provisions of 42 & 43 Vict. c. 30, s. 10, were imperative, and not merely directory; and that as no summons had been duly served in accordance with them the magistrate had no jurisdiction, and the conviction was wrong. *Dixon v. Wells*, 25 Q. B. D. 250; 59 L. J. M. C. 116; 62 L. T. (N.S.) 812; 38 W. R. 606; 54 J. P. 725; 6 T. L. R. 322. It is for the justices to decide whether the summons sufficiently states the particulars of the offence. *Reg. v. Wakefield*, 54 J. P. 148. But when an information merely alleged that the defendant sold

Appendix.

THE PETROLEUM ACT, 1879.

(42 & 43 VICT. CAP. 47.)(a)

An Act to continue and amend the Petroleum Act, 1871.

[11th August, 1879.]

* * * * *

Short title and
construction of
Act.
34 & 35 Vict.
c. 105.

I. This Act may be cited as the Petroleum Act, 1879.

This Act shall be construed as one with the Petroleum Act, 1871, and together with that Act may be cited as the Petroleum Acts, 1871 and 1879.

Alteration of
test.
34 & 35 Vict.
c. 105.

II.(b)

In the Petroleum Act, 1871, the term "petroleum to which this Act applies" shall mean such of the petroleum defined by section three of that Act as, when tested in manner set forth in Schedule One to this Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer.

Every reference in the Petroleum Act, 1871, to Schedule One to that Act shall be construed to refer to Schedule One to this Act.

Verification of
test apparatus.

III. A model of the apparatus for testing petroleum, as described in Schedule One to this Act, shall be deposited with the Board of Trade, and the Board of Trade shall, on payment of such fee, not exceeding five shillings, as they from time to time prescribe, cause to be compared with such model and verified every apparatus constructed in accordance with Schedule One to this Act which is submitted to them for the purpose, and if the same is found correct shall stamp the same with a mark approved of by the Board and notified in the *London Gazette*.

An apparatus for testing petroleum purporting to be stamped with the said mark shall, until the contrary is proved, be deemed to have been verified by the Board of Trade.

All fees under this section shall be paid into the Exchequer.(c)

* * * * *

FIRST SCHEDULE.

MODE OF TESTING PETROLEUM SO AS TO ASCERTAIN THE TEMPERATURE AT WHICH IT WILL GIVE OFF INFLAMMABLE VAPOUR.

Specification of the Test Apparatus.

The following is a description of the details of the apparatus :—

The oil cup consists of a cylindrical vessel 2" diameter, $2\frac{5}{8}$ " height (internal), with outward projecting rim $\frac{5}{8}$ " wide, $\frac{3}{8}$ " from the top, and $1\frac{7}{8}$ " from the bottom of the cup. It is made of gun metal or brass (17 B.W.G.) tinned inside. A bracket, consisting of a short stout piece of wire bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B.W.G.), which carries the thermometer and test lamp. The

a pint of milk which was not of the nature, &c., demanded by the purchaser without giving further particulars of the adulteration, it was held that it was insufficient. *Barnes v. Rider*, 62 L. J. M. C. 25; 68 L. T. (N.S.) 447; 57 J. P. 473; 17 Cox C. C. 623; 5 R. 42. The omission from the summons of the particulars required by this section does not deprive the justices of jurisdiction; but if the justices are satisfied that the defendant is prejudiced thereby, he is entitled to an adjournment of the hearing. *Neal v. Devenish* [1894], 1 Q. B. 544; 63 L. J. M. C. 78; 70 L. T. (N.S.) 628.

(a) See 34 & 35 Vict. c. 105, *ante*, p. 989, and 44 & 45 Vict. c. 67, *post*. See section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), as to the omission of the clause of enactment.

(b) The recital to this section was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(c) Sections 4 to 6 were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Appendix.

latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate; it is provided with a spout, the mouth of which is one-sixteenth of an inch in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted, that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre, $\frac{5}{16}$ " by $\frac{1}{16}$ " and two smaller ones, $\frac{1}{16}$ " by $\frac{1}{16}$ " close to the sides, and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of and in line with the mouth of the lamp, is fixed a white bead, the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B.W.G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{3}{4}$ " height; they are soldered to a circular copper plate (20 B.W.G.), perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{5}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite, to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath and of the oil lamp is one-half of an inch. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B.W.G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit lamp attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way. It is fitted with a metal collar, fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the Weights and Measures Department of the Board of Trade.

Directions for applying the Flashing Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication, or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

Appendix.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candle-wick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65° the samples to be tested should be cooled down (to about 60°) by immersing the bottles containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is placed into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum, which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66° the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree, in the following manner :—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows :—

The air chamber which surrounds the cup is filled with cold water, to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus, and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120° , instead of with cold water.

SECOND SCHEDULE.(a)

Act Repealed.

(a) Repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Appendix.

THE PUBLIC WORKS LOANS ACT, 1879.

(42 & 43 VICT. CAP. 77.)*(b)*

An Act to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant Money for the purpose of Loans by the said Commissioners ; and for other purposes in relation thereto.

[15th August, 1879.]

* * * * *

I. This Act may be cited as the Public Works Loans Act, 1879.

Short title.

PART I.

Amendment of Acts.

II. Where a loan is granted by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, and the rate of interest for such loan, fixed by the special Act which authorises the commissioners to grant the loan, is a special rate less than five per cent., such loan shall, notwithstanding anything in the special Act, bear interest at a rate not less than the rate in the special Act, and such other rate as may be necessary, in the judgment of the . . . Treasury, in order to enable the loans to be made without loss to the Exchequer.*(c)*

Minimum rate of interest for loans.

III. The advances made by the Public Works Loan Commissioners . . . under any one Act, in any one financial year to one borrower (notwithstanding anything in the Act authorising such loan) shall not exceed in the aggregate one hundred thousand pounds.

Restriction on amount of loan to one borrower.

IV. Nothing in this Act shall apply to any loan granted before the passing of this Act, nor to any instalments subsequently advanced in respect of such loan.*(d)* . . . Provided, that where though a loan has not been actually granted before the passing of this Act, negotiations for the same have proceeded so far as to make it in the opinion of the . . . Treasury inequitable for such loan to be subject to the provisions of this Act or any of them, such loan shall, for the purposes of those provisions, be deemed to be a loan granted before the passing of this Act.

Act not to apply to old loans.

V.*(e)*VI.*(f)*

VII. If the Act granting money for the purpose of loans by the Public Works Loan Commissioners authorises the Commissioners for the Reduction of the National Debt to advance money for such purpose, those commissioners may, out of moneys in their hands on account of savings banks or Post Office savings banks, advance to the Public Works Loan Commissioners any sum or sums of money not exceeding in the whole the amount named in the said Act, during the period named in the said Act, or, if no period is named, during the financial year for which such Act was passed.

Regulations as to advances by National Debt Commissioners to the Public Works Loan Commissioners.

Every sum so advanced shall be placed to the account to which money issued by the Treasury to the National Debt Commissioners for the purpose of loans under the

(b) See 38 & 39 Vict. c. 89, *ante*, p. 1028. The preamble to this Act was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). As to the omission of the clause of enactment, see section 4 of that Act.

(c) In the application of this Act to loans granted after 28th June, 1892, the above section is to have effect as if four per cent. were therein substituted for five per cent. 55 & 56 Vict. c. 61, s. 2.

(d) The remainder of this paragraph relating to local matters or Irish matters only is here omitted.

(e) This section gave power to the Public Works Loan Commissioners to lend to the Peabody trustees in London, and is now repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(f) This section was repealed by the Housing of the Working Classes Act, 1890, s. 102, *ante*, p. 660.

Appendix. Public Works Loans Act, 1875, is, for the time being required to be placed, and shall be held and disposed of accordingly.

38 & 39 Vict.
c. 89.

Every sum so advanced shall be repaid with interest at such rate, not exceeding five per cent. per annum, within such number of years, not exceeding thirty, as may be agreed on, with the approval of the Commissioners of Her Majesty's Treasury, between the Public Works Loan Commissioners and the Commissioners for the Reduction of the National Debt.

Every sum so advanced shall be repaid, and the interest from time to time accruing thereon shall be paid, out of the sums paid or applicable in or towards the discharge of the principal or interest of any loan granted by the Public Works Loan Commissioners whether before or after the passing of this Act, and whether before or after the advance of the said sum, and, if such sums are insufficient, shall be charged on and paid out of the Consolidated Fund of the United Kingdom.

For the purpose of such repayment a sufficient portion of the sums so paid or applicable as aforesaid shall, under the direction of the Public Works Loan Commissioners, be paid to the Commissioners for the Reduction of the National Debt, and not into the receipt of the Exchequer.

The security for every sum advanced in pursuance of this section shall be given in such form and manner as may be from time to time directed by the Commissioners of Her Majesty's Treasury, and may be given and executed by the secretary to the Public Works Loan Commissioners in the name of himself and his successors on behalf of the Commissioners.

40 & 41 Vict.
c. 27.
38 & 39 Vict.
c. 89.

This section shall apply in the case of the Commissioners of Public Works in Ireland in like manner as if it were re-enacted, with the substitution of "the Commissioners of Public Works in Ireland" for "the Public Works Loan Commissioners," and of Part II. of the Public Works Loans (Ireland) Act, 1877, for the Public Works Loans Act, 1875.(a)

Application of
38 & 39 Vict.
c. 89, to money
advanced by
National Debt
Commissioners.

VIII. For the purpose of the provisions of the Public Works Loans Act, 1875, relating to the grant of money for the purpose of loans by the Public Works Loan Commissioners, all money advanced by the Commissioners for the Reduction of the National Debt in pursuance of this Act shall be deemed to be money granted by Parliament for the purpose of the said loans.(a)

Composition of Debt.

IX.(b)
* * * * *

THE METROPOLITAN OPEN SPACES ACT, 1881.

(44 & 45 VICT. CAP. 34)(c)

An Act to amend the Metropolitan Open Spaces Act, 1877. [11th August, 1881.]

* * * * *

Interpretation
clause.

I. In this Act, unless the context otherwise requires—
"Open space" means any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied ;

(a) These sections were repealed by 50 & 51 Vict. c. 16, as from the date when an Act passed in the year 1887, authorising the advance of money for local loans (50 & 51 Vict. c. 37) came into operation, and without prejudice to any charge on the Consolidated Fund of any advance until the security for such advance should be exchanged in pursuance of the repealing Act.

(b) This section had merely a local application, and is now repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). Sections 10 and 11, and the schedule, are also repealed by the same Act. The remainder of the Act applies to Ireland only.

(c) So much of this Act as is extended with amendments to urban and to certain rural sanitary districts by section 5 of the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), *post*, is here set out as amended.

The preamble to this Act is repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.

“The metropolis” means the metropolis as defined by the Metropolis Management Act, 1855 ; Appendix.

“The Metropolitan Board” means the Metropolitan Board of Works as constituted by the same Act ; 18 & 19 Vict.
c. 120.

“Vestry” means a vestry of one of the parishes specified in Schedule A. of the same Act ;

“District board” means a board of works of one of the districts specified in Schedule B. of the same Act ;

“The corporation” means the mayor and commonalty and citizens of the city of London, and the powers conferred upon them by this Act may be exercised by the mayor, aldermen, and commons of the said city in common council assembled ;

The “owner” of a churchyard, cemetery, or burial ground means the person or persons, corporation sole, or body corporate in whom the soil and freehold of such churchyard, cemetery, or burial ground is vested, whether as appurtenant or incident to any benefice or cure of souls, or otherwise ;

The term “burial ground” shall include any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment.(d)

II. Where any open space within the metropolis is under the provisions of any private or local Act of Parliament placed under the care and management of trustees or other persons, with a view to the preservation and regulation of the same as a garden or open space, it shall be lawful for the said trustees or other the managing body thereof for the time being, in pursuance of any resolution duly passed as hereinafter mentioned, and with the consent, to be signified in manner hereinafter appearing, of the owners and occupiers of any houses fronting upon, or the owners or occupiers of which are liable to be specially rated for the maintenance of the open space, to convey, assign, or transfer for valuable or nominal consideration, or by way of gift, to the Metropolitan Board, or to the vestry or district board of the parish or district in which such open space or any part thereof is situate, the soil and freehold of, or other their entire interest in, or (where no interest in the soil of such open space is vested in them) the entire care and management of the said open space, to the end that the same may be preserved for the enjoyment of the public ; and upon such conveyance, assignment, or transfer, such trustees or other managing body shall be relieved and discharged from all trusts, powers, and duties imposed upon them by the Act or other instrument under which they were constituted, or under which they then act or otherwise with reference to the said open space, but shall hold any purchase money paid for or in respect of the said open space in trust for the benefit of the persons or class of persons for whose benefit the said open space was previously preserved and managed by the said trustees, and such persons or class of persons shall be discharged from any special rate or other obligation previously imposed on them in respect of such open space.

Power to trustees to transfer certain open spaces to local authority.

It shall be lawful for any such trustees or managing body as aforesaid, in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, for any valuable or nominal consideration, by way of rent or otherwise, or without any consideration, to grant or transfer to the Metropolitan Board, or to any such vestry or district board as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or to enter into any agreement with the Metropolitan Board or any such vestry or district board as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry at all times or at any specified time or times, without the transfer to such board or vestry of any interest in the soil of such open space ; and any such grant, demise, transfer, or agreement as aforesaid shall be deemed a good execution of the trusts, powers, and duties imposed upon the said trustees by the Act or other instrument under which they are constituted or act.

(d) The site of a church where intra-mural burial has taken place is not ground which has been set apart for the purposes of interment within the meaning of this section, and is, therefore, when sold, not within the prohibition against building contained in section 3 of the Dissolved Burial Grounds Act, 1884, *post*, as affected by the Open Spaces Act, 1887, *post*, and by this Act. *In re Ecclesiastical Commissioners and New City of London Brewery Company's Contract* [1895], 1 Ch. 702 ; 64 L. J. Ch. 646 ; 72 L. T. (N.S.) 481 ; 43 W. R. 457 ; 11 T. L. R. 296.

Appendix.

A resolution under this section shall be deemed to have been duly passed if at a meeting of the trustees or other the persons constituting such managing body as aforesaid, summoned by at least one month's notice in writing, left at or sent by post to their last known or usual place of abode, such resolution shall have been passed by a majority of two-thirds in number of the persons present at such meeting, and if such resolution shall also have been confirmed by two-thirds in number of the persons present at a second like meeting, to be summoned by such notice as aforesaid, and to be held at an interval of not less than one calendar month from the first meeting.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if, at a meeting of such persons summoned by at least one month's notice in writing given as hereinafter directed, a resolution shall have been passed by a majority of at least two-thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the Metropolitan Board, vestry, or district board as aforesaid; and if such resolution shall also have been confirmed by two-thirds in number of such owners and occupiers present at a second like meeting, to be summoned in like manner to the first meeting, and to be held at an interval of not less than one calendar month from the first meeting.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house fronting upon, or the owner or occupier of which is liable to be specially rated for the maintenance of, the said open space, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting, and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

If at any meeting of such trustees or managing body, or at any meeting of such owners or occupiers as before mentioned, the resolution proposed at any such meeting be not carried, no meeting shall be called or held with the same object in respect to the same garden or open space until the expiration of three years from the day on which such resolution so proposed was rejected at any such meeting as above mentioned.

A conveyance, assignment, demise, grant, or agreement under this section shall be made by an instrument under the common seal of the trustees or other managing body if such body be a corporation, and if it be not a corporation under the hands and seals of any five members of such body, or of all the members thereof if for the time being they be less than five in number.

The trustees or other the managing body of any such open space as aforesaid may (anything contained in the Act or other instrument under which they are constituted or act to the contrary notwithstanding), in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, signified as aforesaid, admit persons not owning, occupying, or residing in any house fronting on the said open space to the enjoyment of the said open space at all times, or at any specified time or times, and may regulate the admission of such persons thereto on such terms and conditions in all respects as the trustees may think proper.

Any trustees so acting as aforesaid shall have the same power of making bye-laws as that conferred by the fourth section of the Act passed in the 26th year of Her Majesty, chapter thirteen, intituled "An Act for the protection of certain garden or ornamental grounds in cities and boroughs" upon the committee therein mentioned.^(a)

Where the freehold of any such open space as is referred to in this section, and the freehold of all or of the major part of the houses round such open space are vested in the same person or persons, the powers conferred by this section shall not be exercised without the consent of such person or persons.

Power to transfer other open spaces to local authority.

III. The owner of any open space within the metropolis which is subject to rights of user for exercise and recreation (secured by covenant or otherwise) in the owners and occupiers (or either of such classes) of any houses round or near the same may, with the consent (to be signified in manner hereinafter appearing) of such owners and occupiers of houses, convey to the Metropolitan Board, or to the vestry or district

(a) See section 4 of this Act (the Town Gardens Protection Act, 1863), 26 & 27 Vict. c. 13, *ante*, p. 934.

board of the parish or district in which such open space or any part thereof is situate, the soil of the said open space in trust for the enjoyment of the public ; and the owner or any person or persons in whom any term of years or other limited interest in such open space is vested may, with the like consent, grant or transfer to the Metropolitan Board or such vestry or district board as aforesaid, in trust as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or enter into any agreement with the Metropolitan Board or any such vestry or district board as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry either at all times or at any specified time or times without the transfer to such board or vestry of any interest in the soil of such open space.

Appendix.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if at a meeting of such persons summoned by at least one month's notice in writing (given as hereinafter directed) a resolution shall have been passed by a majority of at least two-thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the Metropolitan Board, vestry, or district board as aforesaid, and the owner shall be thereupon discharged from any liability to any person entitled to such right of user as aforesaid in respect of any act done in accordance with such resolution.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house, the owner or occupier of which is entitled to any right of user, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting ; and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of an open space shall be any person or persons in whom the soil of an open space is vested for an estate in possession during his or their life or lives or for any larger estate ; the owner of a house shall include any person entitled to any term of years therein ; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

IV. The owner of any churchyard, cemetery, or burial ground situate within the metropolis, and closed for burials either under an order of Her Majesty the Queen in Council, or otherwise, may convey the soil of such churchyard, cemetery, or burial ground, or grant any term of years or other limited interest therein to or enter into any agreement with the Metropolitan Board or the vestry or district board of the parish or district in which such churchyard, cemetery, or burial ground, or any part thereof, is situate, for the purpose of giving the public access to the said churchyard, cemetery, or burial ground, and preserving the same as an open space accessible to the public, and under the control of such board or vestry, and for the purpose of improving and laying out the same.(a)

Power to transfer disused burial grounds to local authority.

V. The Metropolitan Board and the vestry or district board of the parish or district within which any open space, churchyard, cemetery, or burial ground, or any part thereof, is situate may, by agreement, and for valuable or nominal consideration by way of payment in gross or of rent, or otherwise, or without any consideration, take and hold the soil and freehold of, or any term of years(b) or other limited estate or interest in, or any right or easement in or over any open space, churchyard, cemetery, or burial ground, and may with reference to any open space, churchyard, cemetery, or burial ground, undertake the entire or partial care, management, and control thereof, whether any interest in the soil is transferred to the board or vestry or not, and may, for the purposes aforesaid, enter into any agreement with the persons authorised by this Act to agree with reference to any open space, churchyard, cemetery, or burial ground, or with any other persons interested therein.

Powers and duties of local authority.

Any estate or interest in or control over any open space, churchyard, cemetery, or

(a) A faculty was granted under this Act, and a transfer made under this section in *Re Mount Street Burial Ground*, 4 T. L. R. 661.

(b) Where a vestry acquired the residue of a term of twenty-six years in an open space by assignment of the lease creating the term, it was held that they were "owners" within the meaning of section 250 of the Metropolis Management Act, 1855. *St. Mary, Islington (Vestry of) v. Cobbett* [1895], 1 Q. B. 369 ; 64 L. J. M. C. 36 ; 71 L. T. (N.S.) 573 ; 43 W. R. 44.

Appendix. burial ground acquired by the Metropolitan Board, or any vestry or district board under the provisions of this Act, shall be held and administered by such board or vestry in trust to allow, and with a view to, the enjoyment by the public of such open space, churchyard, cemetery, or burial ground in an open condition, free from buildings, and under proper control and regulation, and for no other purpose . . . ; and the board or vestry shall maintain and keep the same in a good and decent state, and may inclose or keep the same inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, seat, and otherwise improve the same, and do all such works and things, and employ such officers and servants as may be requisite for the purposes aforesaid, or any of them.

Provided that no board or vestry shall exercise any of the powers of management in this Act mentioned with reference to any consecrated ground, unless and until they are authorised so to do by the license or faculty in that behalf of the bishop of the diocese in which such consecrated ground is situate, which license or faculty may be granted by such bishop upon the application of the board or vestry, and may extend to the removal of any tombstone or monument, under such conditions and subject to such restrictions as to the bishop may seem fit.^(a)

Bye-laws.

VI. The Metropolitan Board and any vestry or district board may, with reference to any open space, churchyard, cemetery, or burial ground in or over which it has acquired any estate, interest, or control under the provisions of this Act, make bye-laws for the regulation thereof, and of the days and times of admission thereto, and the preservation of order and prevention of nuisances therein, and may by such bye-laws impose penalties for the infringement thereof, and provide for the removal of any person infringing any such bye-law by any officer of the board or vestry or police constable.

* * * * *

Metropolitan Board and vestry or district board may carry out Act jointly.

VII. The Metropolitan Board or any vestry or district board, and where an open space extends into two or more parishes or districts two or more vestries or district boards, either with or without the Metropolitan Board, may jointly carry out the provisions of this Act, and may enter into any agreement, on such terms as may be arranged between them, for so doing and for defraying the expenses of the execution of the Act, and the Metropolitan Board may defray the whole or any part of the expenses of the execution of this Act by any vestry or district board, and any vestry or district board may similarly defray the whole or any part of the expenses of the Metropolitan Board or, where an open space extends into two or more parishes or districts, of any other vestry or district board.

Provision for extra-parochial places.

VIII. Where any open space, churchyard, cemetery, or burial ground, by virtue of any Act of Parliament or otherwise, is extra-parochial, or forms part of some parish other than that which surrounds the same, the vestry or district board acting for the parish surrounding the same may carry out, or may enter into agreement with any one or more vestries or district boards acting for any other parishes, on such terms as may be arranged between them, and may jointly carry out the provisions of this Act, and shall have the same powers in every respect as if such open space, churchyard, cemetery, or burial ground were part of the parish or district of such vestry or district board.

Provision for compensation.

IX. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space, churchyard, cemetery, or burial ground shall, except with the consent of the body or person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same; and such compensation shall be paid by the Metropolitan Board, vestry, or district board by which such estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Lands Clauses Consolidation Act, 1845, and any Acts amending the same.

* * * * *

8 & 9 Vict.
c. 18.

^(a) A faculty was granted under this section in *Re Mount Street Burial Ground*, 4 T. L. R. 661; *Re St. George's Burial Ground*, *ib.* 703; and in *Re Camden Town Burial Ground*, 5 T. L. R. 311. See also as to filling up vaults out of repair, *St. Botolph-without-Aldgate* (Ticar, &c., of), v. *Parishioners* [1892], P. 173.

Appendix.

THE ALKALI, &c., WORKS REGULATION ACT, 1881.(a)

(44 & 45 VICT. CAP. 37.)

An Act to consolidate the Alkali Acts, 1863 and 1874, and to make further provision for regulating Alkali and certain other works in which noxious or offensive gases are evolved. [14th August, 1881.]

* * * * *

Preliminary.

I. This Act may be cited as the Alkali, &c., Works Regulation Act, 1881.

Short title.

* * * * *

PART I.

Alkali Works and Alkali Waste.

III. Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination, or from that of some other inspector,—

Condensation of
muriatic and
other acid gases
in alkali works.

(a.) Of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid.

(b.) Of the acid gases of sulphur and nitrogen which are evolved in the process of manufacturing sulphuric acid or sulphates in the work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases escaping into the chimney or into the atmosphere does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner(b) of any alkali work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

IV. In addition to the condensation of acid gases as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

Best practicable
means to be used
for preventing
discharge of
noxious and
offensive gases
in alkali works.

If the owner of any alkali work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

V. Every work in which acid is produced or used shall be carried on in such manner that the acid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

Acid drainage
and alkali waste
to be kept apart.

The owner of any work which is carried on in contravention of this section shall be liable to a fine, not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

(a) This Act is amended by 55 & 56 Vict. c. 30, *post*. As to the omission of the clause of enactment to this Act, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). That Act also repeals sections 2 and 30 of this Act, and parts of sections 11, 14, and 19, and the three sections last mentioned are here inserted only so far as not so repealed.

(b) See the definitions in section 29, *post*.

Appendix.

39 & 40 Vict.
c. 75.

On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off the acid produced in such work into the sea or into any river or watercourse into which such acid can be carried without contravention of the Rivers Pollution Prevention Act, 1876,(a) and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act.(b)

Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

Deposit or
discharge of
alkali waste.

VI. Alkali waste shall not be deposited or discharged without the best practicable means being used for effectually preventing any nuisance arising therefrom.(c)

Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Prevention
of nuisance
from alkali
waste already
deposited or
discharged.

VII. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof he shall be liable to a fine not exceeding twenty pounds, and if he does not proceed to use such means within such time as shall be limited by the court inflicting such fine then he shall be liable to a further penalty of five pounds per day from the expiration of the time so limited.

PART II.*Sulphuric Acid Works and other specified Works.*

Condensation
of acid gases in
sulphuric
acid works.

VIII. Every sulphuric acid work as defined in the schedule to this Act,(d) shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination or from that of some other inspector, of the acid gases of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in such work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases escaping into the chimney or into the atmosphere does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any sulphuric acid work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

Best practicable
means to be
used for pre-
venting dis-
charge of
noxious and

IX. The owner of any work specified in the schedule to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when

(a) See *ante*, p. 1058.

(b) See sections 16, 32, of that Act, *ante*. Reference should be made to *St. Helens Chemical Works v. St. Helens Corporation*, *ante*, where owners were held liable for a nuisance caused by the evolution of noxious gases in a sewer consequent upon the discharge into the sewer of muriatic acid and sulphur.

(c) As to the discharge of solid matter in suspension into any navigable water, see *United Alkali Company v. Simpson*, *ante*, p. 1062.

(d) The works mentioned in the Schedule have been added to by 55 & 56 Vict. c. 30, *post*.

discharged, subject to the qualification, in the case of sulphuric acid works, that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section. Appendix.
offensive gases
in scheduled
works.

If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

X. An inspector may from time to time inquire whether, in any works in which the extraction of salt from brine is carried on, hereinafter called salt works, means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of sulphuric and muriatic acid gases evolved in such works, or either of such gases, or for rendering such gases, or either of them, harmless or inoffensive when discharged; also whether in any works in which aluminous deposits are treated for the purpose of making cement, hereinafter called cement works, such means as aforesaid can be adopted with respect to the noxious or offensive gases evolved from such works. Provisional
order to
prevent dis-
charge of
certain gases in
salt works.

Where it appears to the Local Government Board that such means can be adopted at a reasonable expense the board may from time to time by order require the owners of such works to adopt the best practicable means for the purpose, and may by the order limit the amount or proportion, in the case of salt works, or sulphurous or muriatic acid gas, and in the case of cement works of any noxious or offensive gas, which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the order extend to such works such provisions of this Act relating to scheduled works as they see fit.

An order made under this section shall be provisional only and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act" when used in this Act shall be deemed to include an order so confirmed, so far as is consistent with the tenor of that order.

The board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any order made by them under this section before any bill for confirming the same is introduced into Parliament.

An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.(e)

PART III.

(i.) *Registration of Works.*

- XI. (1.) An alkali work or a work to which Part II. of this Act applies shall not be carried on unless it is certified to be registered. Registration of
works, and
stamp duty.
- (2.) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner.
- (3.) The owner of an alkali work or of a work required to be registered shall in the month of January or February in every year apply for a certificate of registration in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued, and shall be in force for one year from the first day of April following the said application.
- (4.) The owner of an alkali work or of a work required to be registered erected after the commencement of this Act shall before commencing any manu-

(e) Works in which salt is produced by refining rock-salt, other than those where the rock-salt is dissolved at the place of deposit, are exempted from the provisions of this Act in regard to works in which the extraction of salt from brine is carried on, or of any order made or to be made under the above section. 55 & 56 Vict. c. 30, s. 2, *post*.

Appendix.

facture or process in such work apply for such certificate in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued as soon as may be, and shall be in force until the next first day of April.

There shall be charged in respect of every such certificate, in the case of an alkali work, the duty of five pounds ; and in the case of a work required to be registered, not being an alkali work, the duty of three pounds.

- (5.) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to an inspector, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.
- (6.) The owner of a work which is carried on in contravention of this section shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding five pounds for every day during which it is so carried on.^(a)

Certificate
of inspector
prior to re-
gistration of
new works.

XII. An alkali work or a scheduled work, erected after the commencement of this Act, or which has been closed for a period of twelve months, shall not be registered under this Act unless the work is furnished with such appliances as at the time of registration appear to the chief inspector after his own examination, or that of an inspector, or in case of difference to the central authority, to be necessary in order to enable the work to be carried on in accordance with such requirements of this Act as for the time being apply to such work.

Supplemental
provisions
as to duties.

XIII. The duties charged in respect of a certificate of registration under this Act shall be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly ; and for the purpose of the said duties the Commissioners of Inland Revenue shall issue stamped forms of certificate, and the commissioners may issue the same at any time after the passing of this Act.

(ii.) *Inspection.*

Appointment of
inspectors.

XIV. The Local Government Board^(b) shall from time to time, with the approval of the Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they from time to time fix) as the board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the *London Gazette*, and a copy of the *Gazette* shall be evidence of the appointment.

The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Treasury may sanction, shall be paid out of moneys provided by Parliament.

. . . . A person holding the office of chief inspector (other than the person at

(a) A form of application for registration under this section was prescribed by the Local Government Board by circular dated 30th December, 1881, and subsequently by General Order dated 7th January, 1882, the Board prescribed the particulars to be contained in applications for certificates and the form of certificate and endorsement thereon in case of change of ownership. This Order was published in the *London Gazette* for the 10th January, 1882, at p. 98.

(b) The inspectors were appointed by the Board of Trade under the former Acts, until the passing of 35 & 36 Vict. c. 79, s. 35, re-enacted in the Public Health Act, 1875, Schedule V., ante, p. 455. Words omitted in this section were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

the commencement of this Act discharging the duties thereof) or inspectors shall not be employed in any other work except by or with the sanction of the authority appointing him to such office. Appendix.

XV. A person who acts or practises as a land agent (c) or who is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act, or who is employed in or about or in connection with any work to which this Act applies, or in any other chemical work for gain, shall be disqualified to act as an inspector under this Act. Disqualification of certain persons for inspectors.

XVI. For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture, enter and inspect any work to which this Act applies, and examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, and may ascertain the quantity of gas discharged into the atmosphere, condensed, or otherwise dealt with ; and may enter and inspect any place where alkali waste is treated or deposited, or where any liquid containing acid is likely to come into contact with alkali waste ; and generally may inquire into all matters and processes which tend to show compliance or non-compliance with such of the provisions of this Act as are for the time being applicable to the work or place entered, or which seem necessary or proper for the execution of his duties under this Act. Powers of inspectors.

An inspector may, but so as not to interrupt the process of the manufacture, apply any tests and make any experiments he may think proper for the purpose of the execution of his duties under this Act.

XVII. The owner of any work to which this Act applies shall, on the demand of the chief inspector, furnish him within a reasonable time with a plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas, or any process for the condensation of such gas or preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, is carried on. Facilities for inspection.

The owner of every such work and his agents shall render to every inspector all necessary facilities for an entry, inspection, examination, and testing in pursuance of this Act.

Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which (d) an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding ten pounds.

XVIII. The chief inspector shall on or before the first day of March in every year make a report in writing to the Local Government Board of the proceedings of himself and of the other inspectors under this Act, who shall furnish him with a detailed account of the number of inspections of works in their districts, and the recorded escapes of acid gases from such works during the preceding year, and a copy of such report shall be laid before both Houses of Parliament. Annual report to Local Government Board.

XIX. If any sanitary authority or authorities apply to the central authority for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one-half, out of any rate or rates leviable by such Additional inspector on application of sanitary authorities.

(c) This is a term of no very definite meaning. A person who manages the landed estate of another is a *land agent* ; such a person is doubtless referred to here, though there are other persons called land agents.

(d) This seems to render an owner liable for an obstruction caused by any person in his employment. See, however, section 25, *post*.

Appendix.

authority or authorities (which undertaking such authority or authorities are hereby authorised to give and to carry into effect), the Local Government Board may (if they see fit) from time to time, with the sanction of the . . . Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and the same regulations and liabilities as other inspectors under this Act.

The proportion of salary or remuneration aforesaid shall be paid at the prescribed time or times into Her Majesty's Exchequer, and in the case of failure on the part of any sanitary authority to pay any sum payable by them in pursuance of this section, the same may be recovered by action in any court of competent jurisdiction.

(iii.) Special Rules.

Power of owners of works to make special rules.

XX. The owner of an alkali work or of a scheduled work may, with the sanction of the central authority, (a) make, and when made, alter, add to, and repeal special rules for the guidance of his workmen who are employed in any process causing the evolution of any noxious or offensive gas, or whose duty it is to attend to the apparatus used in the condensation of that gas, or for preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless and inoffensive when discharged, and may annex fines to any violation of such rules, so that the fine for any offence do not exceed two pounds.

A printed copy of the special rules in force under this section in any work shall be given by the owner of that work to every person working or employed in or about that work who is affected thereby.

Any fine incurred under this Act in respect of an offence against a special rule may be recovered summarily.

(iv.) Procedure.

Provision as to calculation of acid.

XXI. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases, shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

Recovery of fines for offences against Act in county court.

XXII. The following regulations are hereby enacted with respect to the recovery of fines for offences other than offences against a special rule:

Every such fine (b) shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed:

The action shall be brought, with the sanction of the central authority, by the chief inspector, or by such other inspector as the Local Government Board may in any particular case direct, within three months after the commission of the offence, (c) and for the purposes of such action the fine shall be deemed to be a debt due to such inspector: (d)

The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring the action, until the contrary is proved by the defendant: (e)

(a) *i.e.*, the Local Government Board. See section 29, *post*.

(b) The word fine is hardly applicable to a sum which is to be recovered by civil proceedings. It is equivalent to penalty. This Act provides for maximum and not fixed penalties, but does not point out who is to decide as to the proper amount. The fine is to be claimed as a debt, and it seems that the inspector should sue for the maximum amount, the judge of the court giving judgment for the amount he shall deem sufficient.

(c) The offence may be continuing, or there may be a separate offence for every day it is continued. See, for example, section 5, *ante*, and section 23, *post*; and *Reg. v. Waterhouse*, *ante*, p. 122.

(d) Section 24, *post*, provides for the application of the penalty when recovered. There is no provision with reference to the costs of the inspector, but as he will be acting officially, it is to be presumed that the costs, in so far as they are not recovered from the defendant, will be paid by the Treasury.

(e) Hence it will not be necessary for the inspector to produce the *Gazette*, which, according to section 14, *ante*, will be evidence of his appointment.

The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action : Appendix.

If either party in any action under this Act feels aggrieved by the decision of the court in point of law, or on the merits^(f) or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice :

The appeal shall be in the form of a special case to be agreed on by both parties or their solicitors, and if they cannot agree, to be settled by the judge of the county court on the application of the parties or their solicitors :

The court of appeal may draw any inference from the facts stated in the case that a jury might draw from facts stated by witnesses :

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the High Court of Justice, or any division or judge thereof, on such appeals, shall apply to an action for a fine under this Act, and to an appeal from such action in the same manner, as if such action and appeal related to a matter within the ordinary jurisdiction of the court :

Within the city of London and the liberties thereof the sheriff's court established by a local Act passed in the eleventh year of the reign of Her present Majesty, chapter seventy-one, intituled An Act for the more easy recovery of small debts and demands within the city of London and the liberties thereof, shall be deemed to be the county court for the purposes of this Act :

In Scotland the court of the sheriff or sheriff substitute of the county in which the offence is committed shall be the county court for the purposes of this Act, and may award costs to either party, and may sentence the offender to imprisonment for any period not exceeding six months, unless the fine and costs be previously paid ; and any decision or sentence of such sheriff or sheriff substitute shall be subject to review and appeal according to law :

In Ireland such fines as are in this section mentioned may be recovered by civil bill, in the manner and with the appeal directed by an Act passed in the fourteenth and fifteenth years of Her present Majesty, chapter fifty-seven, or any Act or Acts amending the law relating to civil bills.

XXIII. In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule— Further provisions as to recovery of fines in county court.

(a.) It shall be sufficient to allege that any work is a work to which this Act applies, without more ; and

(b.) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

Not less than twenty-one days before the hearing of any proceeding against an owner to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognizance of the matter.

A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has

(f) This appears to signify upon the effect of the facts proved in evidence, but the term is indefinite, and may perhaps be considered to be applicable to the amount of the penalty imposed.

Appendix. been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

Application of fines.

XXIV. All fines recovered under this Act, except in respect of offences against a special rule,^(a) shall be paid into the receipt of Her Majesty's Exchequer.

Discharge of owner on conviction of actual offender.

XXV. The owner of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed by some agent, servant, or workman, whom he shall charge by name as the actual offender, without his knowledge, consent, or connivance; in which case such agent, servant, or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act.

Provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case in which it is made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge, consent, or connivance of the owner, and in contravention of his orders.

Service of notices.

XXVI. Any notice, summons, or other document under this Act, may be in writing or print, or partly in writing and partly in print.

Any notice, summons, or document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by delivering the same to the owner, or at his residence or works; it may also be served or sent by post by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and the same shall be deemed to be properly addressed if addressed to the registered address of an owner or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner.^(b)

Complaint by sanitary authority in cases of nuisance.

XXVII. Where it appears to any sanitary authority, on the written representation of any of their officers, or of any ten inhabitants of their district, that any work (either within or without their district) to which this Act applies is carried on in contravention of this Act, or that any alkali waste is deposited (either within or without the district) in contravention of this Act, and that a nuisance is occasioned by such contravention to any of the inhabitants of their district, such authority may complain to the central authority,^(c) who shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think just.

The sanitary authority complaining shall, if so required by the central authority pay the expense of any such inquiry, and may pay the same out of the fund or rate applicable to the general expenses of such authority.^(d)

(a) Fines in respect of offences against a special rule are recoverable summarily (section 20, *ante*). The fines so recovered, not being appropriated, must be paid to the county or borough treasurer under 11 & 12 Vict. c. 43, s. 31, and 14 & 15 Vict. c. 55, s. 11.

(b) This provision somewhat resembles that in section 267 of the Public Health Act, 1875, p. 359. See the notes to that section.

(c) That is, to the Local Government Board; section 29, *post*.

(d) That is, out of the general distinct fund in the case of an urban authority. Such expenses being payable by a rural authority are general expenses, see section 229, *ante*, p. 308.

The expression "sanitary authority" in this section includes as regards the metropolis, except the city of London, any vestry or district board elected under the Metropolis Management Act, 1855, also any local board of health, not being an urban sanitary authority within the meaning of the Public Health Act, 1875, and as regards the city of London shall mean the Commissioners of Sewers of the said city.

Appendix.

18 & 19 Vict.
c. 120.
38 & 39 Vict.
c. 55.

XXVIII. Where a nuisance arising from any noxious or offensive gas or gases is wholly or partially caused by the acts or defaults of several persons, any person injured by such nuisance may proceed against any one or more of such persons, and may recover damages from each person made a defendant in proportion to the extent of the contribution of such defendant to the nuisance, notwithstanding that the act or default of such defendant would not separately have caused a nuisance. This section shall not apply to any defendant who can produce a certificate from the chief inspector that in the works of such defendant the requirements of this Act have been complied with and were complied with when the nuisance arose.

Actions in cases
of contributory
nuisance.

(v.) *Definitions ; Repeal ; Saving.*

XXIX. In this Act, unless the context otherwise requires —

Interpretation
of terms.

"Alkali work" means every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, and for the purpose of this definition the formation of any sulphate in the treatment of copper ores by common salt or other chlorides shall be deemed to be a manufacture of sulphate of soda.(e)

"Noxious or offensive gas" does not include sulphurous acid arising from the combustion of coal.

"Owner" means the lessee, occupier, or any other person carrying on any work to which this Act applies.

"Prescribed" means prescribed from time to time by the Local Government Board, and "the Local Government Board" means the Local Government Board established by the Local Government Board Act, 1871.

34 & 35 Vict.
c. 70.

"Central authority" means as regards England the said Local Government Board, as regards Ireland the Local Government Board for Ireland, and as regards Scotland one of Her Majesty's principal Secretaries of State.

"Sanitary authority" means any local authority entrusted with the execution of the Public Health Act.

"The Public Health Act" means, as regards England, the Public Health Act, 1875 ; and as regards Scotland, the Public Health (Scotland) Act, 1867 ; and as regards Ireland, the Public Health (Ireland) Act, 1878.

38 & 39 Vict.
c. 55.
30 & 31 Vict.
c. 101.
41 & 42 Vict.
c. 52.

"Person" includes a corporation.

XXX.(f)

XXXI. Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action, indictment, or otherwise, to which he would have been entitled if this Act had not passed.

Saving as to
general law.

(e) See 55 & 56 Vict. c. 30, *post*, which adds to the list of scheduled works.

(f) This section was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Appendix.

SCHEDULE.

List of Works.(a)

- (1) Sulphuric acid works, that is to say, any works in which the manufacture of sulphuric acid is carried on (not being alkali works within the meaning of the foregoing Act, and not being works in which the manufacture of sulphuric acid is carried on in conjunction with the extraction of copper or other metals from ore) ;
- (2.) Chemical manure works, that is to say, any works in which the manufacture of chemical manure is carried on ;
- (3.) Gas liquor works, that is to say, any works in which gas liquor is used in any manufacturing process ;
- (4.) Nitric acid works, that is to say, any works in which the manufacture of nitric acid is carried on ;
- (5.) Sulphate of ammonia works and muriate of ammonia works, that is to say, any works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on ; and
- (6.) Chlorine works or works in which chlorine, bleaching powder, or bleaching liquor is made.

THE PUBLIC WORKS LOANS ACT, 1881.

(44 & 45 VICT. CAP. 38.)(b)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland ; and for other purposes relating to Loans by those Commissioners. [22nd August, 1881.]

* * * * *

Short title.

1. This Act may be cited as the Public Works Loans Act, 1881.

PART I

Relates to the Grant of Money for Public Works Loan Commissioners during the period ending 30th June, 1882.

PART II

Relates only to the Grant of Money for Public Works Commissioners, Ireland, during the period ending 30th June, 1882.

PART III

The early portion relates only to the Remission, &c., of Loans in various cases.

* * * * *

Amendment of Acts.

Amendment of 38 & 39 Vict. c. 89, s. 22, as to rate of interest for loan.

VII. Where the Public Works Loan Commissioners have, either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875,(c) or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act advance any sum for the completion, repair,

(a) This list is considerably extended by 55 & 56 Vict. c. 30, *post*.
(b) See 38 & 39 Vict. c. 89, *ante*, p. 1028. The preamble to this Act was repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). See also section 4 of that Act as to the omission of the clause of enactment.
(c) See section 22, *ante*, p. 1033.

improvement, or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

Appendix.

VIII. The Local Government Board may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six(d) of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners either before or after the passing of this Act, on the security of a rate, has been applied to the purpose for which the same was advanced.

Expenses of ascertaining (under 38 & 39 Vict. c. 89, s. 36) that loans advanced by the Public Works Loan Commissioners have been properly applied.

Any such order may contain directions as to the parties by whom, and the rates out of which such expenses shall be borne, and on the application of the Local Government Board may be made a rule of the High Court of Justice in England, or of the High Court of Session in either division of the Inner House thereof in Scotland.

IX. The unapplied balance of any loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate, may, with the consent of the said commissioners, and of the central authority or department, if any, with whose sanction or consent such loan was authorized to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are properly applicable; and in construing section thirty-six(d) of the Public Works Loans Act, 1875, and section four(d) of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance as aforesaid is so applied shall be deemed to be the purpose for which that portion of the loan was advanced.

Application of surplus balances of loans made by the Public Works Loan Commissioners. 41 Vict. c. 18.

X.(e)

* * * * *

THE PETROLEUM (HAWKERS) ACT, 1881.

(44 & 45 VICT. CAP. 67.)(f)

An Act to regulate the hawking of Petroleum and other substances of a like nature.

[27th August, 1881.]

* * * * *

I. Any person who is licensed in pursuance of the Petroleum Act, 1871, to keep petroleum to which that Act applies may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum by himself or his servants.(g)

Power to hawk petroleum. 34 & 35 Vict. c. 105.

II. With respect to the hawking of petroleum to which the Petroleum Act, 1871, applies, the following regulations shall be observed :

Regulations for hawking petroleum.

- (1.) The amount of petroleum conveyed at one time in any one carriage shall not exceed twenty gallons :
- (2.) The petroleum shall be conveyed in a closed vessel so constructed as to be free from leakage :

(d) See the section, *ante*, p. 1036.

(e) This section relates to local matters only ; and the remaining sections of the Act apply only to Ireland.

(f) See 34 & 35 Vict. c. 105, *ante*, p. 989, and 42 & 43 Vict. c. 47, *ante*, p. 1106. As to hawking petroleum in a cart before the passing of this Act, see *Coleman v. Goldsmith*, 43 J. P. 718. As to the omission of the clause of enactment to this Act, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(g) A hawker's license will be necessary. See 51 & 52 Vict. c. 33. As to what constitutes hawking petroleum, see section 6, *post*.

Appendix.

- (3.) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage in such proportion as to produce or be liable to produce an explosive mixture :
- 4.) Any fire or light or any article of an explosive or highly inflammable nature shall not be brought into or dangerously near to the carriage in which the vessels containing the petroleum are conveyed :
- 5.) The carriage in which the vessels containing the petroleum are conveyed shall be so constructed or fitted that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise :
- 6.) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer :
- (7.) The petroleum shall be stored in some premises licensed for keeping of petroleum and in accordance with the license for such premises both every night, and also when the petroleum is not in the course of being hawked :
- (8.) All due precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the vessels containing the petroleum, and every person concerned in hawking the petroleum shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking :
- (9.) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the purpose of hawking petroleum.

In the event of any contravention of this section with reference to any petroleum, the petroleum, together with the vessels containing and the carriage conveying the same, shall be liable to be forfeited, and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked shall be liable on summary conviction to a penalty not exceeding twenty pounds.

Provided that—

- (1.) Where some servant of the licensee or other person has in fact committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee :
- (2.) Where the licensee is charged with a contravention of this section, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if the licensee prove to the satisfaction of the court that he had used due diligence to enforce the execution of this section, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt from any penalty.

Any petroleum other than that to which the Petroleum Act, 1871, applies, while in any carriage used for the hawking of petroleum to which the Petroleum Act, 1871, applies, shall for the purposes of this section be deemed to be petroleum to which the Petroleum Act, 1871, applies.

Modification of conditions of license under 34 & 35 Vict. c. 105.

III. Any conditions annexed to a license granted in pursuance of the Petroleum Act, 1871(a) . . . shall, so far as they are inconsistent with this Act, be void, but save as aforesaid, nothing in this Act shall affect the application to a licensee of the provisions of the Petroleum Act, 1871, or of any license granted thereunder.

Power of constable as to prevention of offences.

IV. Where a constable or any officer authorised by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or not a contravention of this Act, and section thirteen of the

(a) Words here now no longer necessary are repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section, and as if the seizure were a seizure in pursuance of that section.

Appendix.

V. Nothing in this Act contained shall extend to authorise the hawking of petroleum within the limits of any municipal borough in which, by any lawful authority, such hawking shall have been or may hereafter be forbidden.

Saving of rights of municipal boroughs.

VI. For the purposes of this Act—

Definition.

The expression “carriage” includes any carriage, waggon, cart, truck, vehicle, or other means of conveyance by land, in whatever manner the same may be drawn or propelled ; and

A person shall be deemed for the purposes of this Act to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town or to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden.

VII. This Act may be cited as the Petroleum (Hawkers) Act, 1881.

Short title and construction of Act.
34 & 35 Vict. c. 105.
42 & 43 Vict. c. 47.

This Act may be construed as one with the Petroleum Acts, 1871 and 1879, and together with those Acts may be cited as the Petroleum Acts, 1871 to 1881.

THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

(45 VICT. CAP. 15.)(b)

An Act to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common.
[19th June, 1882.]

WHEREAS under the provisions of the Lands Clauses Consolidation Act, 1845,^(c) 8 & 9 Vict. c. 18. and of railway and other special Acts of Parliament, money is directed or authorised to be paid to a committee as compensation for the extinction of commonable rights or for lands, being common lands or in the nature thereof, the right to the soil of which belongs to the commoners :

And by the Lands Clauses Consolidation Act, 1845, and by the Inclosure Act, 15 & 16 Vict. 1852, and the Inclosure Act, 1854, certain powers of apportioning and otherwise dealing with such money are conferred upon any such committee^(d) and upon the Inclosure Commissioners for England and Wales (hereinafter called the commissioners),^(e) but such powers are found in practice to be insufficient, and money paid by way of compensation as aforesaid is often in consequence useless to the persons interested therein :

And whereas it is expedient to give such powers of dealing with such compensation money as are hereinafter specified, but such powers cannot be conferred without the sanction of Parliament :

* * * * *

I. This Act may be cited as the Commonable Rights Compensation Act, 1882.

Short title.

(b) This Act is included in this Appendix by reason of the provision which it contains in section 2, sub-sect. (5), vesting recreation grounds in urban sanitary authorities when these are purchased out of moneys paid for the extinction of commonable rights under the Lands Clauses Act, 1845, and special Acts which authorise the taking or interfering with common lands.

(c) See the Act, sections 99—107 inclusive, *ante*, p. 831.

(d) As to this committee, see 8 & 9 Vict. c. 18, s. 103, *ante*, p. 832.

(e) The powers and duties of the Inclosure Commissioners were transferred to the Land Commissioners by 45 & 46 Vict. c. 38, s. 48, and are now transferred to the Board of Agriculture by 52 & 53 Vict. c. 30.

Appendix.

Application of
compensation
money for com-
mons lands.

I. (1.) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act^(a) and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners^(b) as compensation for the extinguishment of commonable or other rights or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the commissioners^(c) to call a meeting of the persons interested in such money to consider the application thereof, and the commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways:—

(a.) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid :

(b.) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a provisional order for the regulation of such common land, or of any application to Parliament for a Private Bill or otherwise for the preservation and management of such common land as an open space :

(c.) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same :

(d.) In the purchase of additional land to be used as common land :

(e.) In the purchase of land to be used as a recreation ground for the neighbourhood :^(d)

and any such resolution shall bind the minority and all absent parties, and the commissioners shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons, or the legal personal representative of such survivor, shall, upon service of any such order of the commissioners as aforesaid upon them or any of them or any person on their behalf as the commissioners may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(a) See note (c), *ante*, p. 1127.

(b) As to this committee, see 8 & 9 Vict. c. 18, s. 103, *ante*, p. 832. Prior to 1802 the occupiers of certain cottages were accustomed to cut turf on large tracts of commonable and waste lands of a manor. In that year an Inclosure Act was passed by which commissioners were empowered to allot lands in severalty to the lord and other persons interested, and to allot to the lord in trust for the occupiers of the cottages portions of the waste for a turf common, to be managed as the lord and the churchwardens and overseers should order, and not to be depastured. The commissioners by their award, made in 1806, allotted to the lord of the manor, in trust for the occupiers for the time being of the cottages, 425 acres of waste for a turf common for the use of the cottagers. The commissioners also allotted to the lord and other persons interested portions of the enclosed lands in severalty in lieu of their rights and interests. A railway company took for the purposes of their undertaking part of the land allotted as a turf common, and the purchase money was paid into court. On a petition by the freeholder of the cottages for the distribution of the fund, it was held that the owners of the cottages had no claim on the funds; and that the lord of the manor was entitled to such part of the fund as represented the value of the soil in the land taken by the company. It was also held that the remainder of the fund was to be held as a charitable trust for the benefit of the occupiers of the cottages. *Attorney-General v. Meyrick*; *In re Christchurch Inclosure Act* [1893], A. C. 1; 62 L. J. Ch. 313; 68 L. T. 174; 57 J. P. 212. Where the relative values of commonable rights could not be strictly ascertained by reason of the land being built over, a fund was ordered to be divided equally among the commoners. *Weatherley v. Layton*, W. N. 1892, p. 164.

(c) See note (e), *ante*, p. 1127.

(d) It is only in this case that the urban sanitary authority have any interest. See subsect. (5), *post*.

(2.) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the commissioners, pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said commissioners by such majorities as aforesaid.

Appendix.

(3.) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the commissioners under their seal, and upon such confirmation the land shall vest in the remaining and the newly-appointed trustees without any conveyance.

(4.) The commissioners shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made by them under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5.) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the schedule to this Act(e) for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878.(f)

III. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate, or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or of any other Act of Parliament, to any local authority as specified in the schedule to this Act, or to the churchwardens and overseers of a parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively.(g)

Application of compensation money for recreation grounds and field gardens.

42 & 43 Vict. c. 37.

IV. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the commissioners in manner provided by this Act,(h) by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the commissioners under their seal, be deemed to have been lawfully made under the provisions of this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions in this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land.

Provision for cases where money paid by way of compensation has already been applied in the manner authorised by this Act.

V. Copies of all orders made by the commissioners under this Act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept.(i)

Deposit of orders.

VI. This Act shall not extend to the New Forest.

Exception of the New Forest.

(e) In urban districts this local authority is the urban sanitary authority. See the Schedule, *post*.

(f) See 8 & 9 Vict. c. 118, ss. 34, 72—74, 92; 9 & 10 Vict. c. 70, s. 4; 15 & 16 Vict. c. 79, s. 14; 20 & 21 Vict. c. 31, ss. 12, 13; 42 & 43 Vict. c. 37. See also the Commons Act, 1876 (39 & 40 Vict. c. 56), *ante*, p. 1044, especially ss. 7, 12, 22—29.

(g) See the Acts enumerated in the last preceding note.

(h) The Act does not provide any manner of calling a meeting. See section 2, *ante*.

(i) See 8 & 9 Vict. c. 118, s. 146; 15 & 16 Vict. c. 79, s. 27.

Appendix.

SCHEDULE.

Situation of Land.	Local Authority.
Within the metropolis - - - - -	The Metropolitan Board of Works.
Not within the metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

THE BATHS AND WASH-HOUSES ACT, 1882.

(45 & 46 VICT. CAP. 30.)(a)

An Act to amend the Baths and Wash-houses Acts. [24th July, 1882.]

WHEREAS it is desirable to give increased facilities to local authorities for providing baths and wash-houses within easy and convenient reach :

* * * * *

Short title.

I. This Act may be cited for all purposes as the Baths and Wash-houses Act, 1882, and shall be read as one with the Act of the ninth and tenth years of the reign of Her present Majesty chapter seventy-four, in this Act called " the principal Act."

Amendment
of 9 & 10 Vict.
c. 74, s. 27.

II. Section twenty-seven of the principal Act(b) shall be amended by the addition of the words " or in the immediate neighbourhood of such borough or parish " to the words " in any such borough or parish " wherever such last-mentioned words occur in the said section.

* * * * *

THE MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 VICT. CAP. 50.)(c)

An Act for consolidating, with amendments, enactments relating to Municipal Corporations in England and Wales. [18th August, 1882.]

WHEREAS divers bodies corporate at sundry times have been constituted in the cities, towns, and boroughs of England and Wales to the intent that the same might for ever be and remain well and quietly governed :

(a) See 9 & 10 Vict. c. 74, *ante*, p. 846 ; 10 & 11 Vict. c. 61, *ante*, p. 896 ; 41 Vict. c. 14, *ante*, p. 1078. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(b) *Ante*, p. 851.

(c) A large portion of this Act has been applied with adaptations by the Local Government Act, 1894 (56 & 57 Vict. c. 73), *ante*, p. 698, to the district councils of urban districts not being boroughs to which this Act of itself applies, and to rural district councils. Certain portions also have a close connection with some of the enactments set out in the body of this Work so far as those enactments apply to the councils of boroughs to which this Act applies in respect of their functions as sanitary authorities. All these portions of the Act have been

Appendix.

And whereas the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of municipal corporations in England and Wales," applies to most of those bodies constituted before the passing of that Act, and to every of those bodies constituted before the passing of this Act; and that Act having been from time to time much altered and added to by other Acts, it is expedient that all the Acts aforesaid be reduced into one Act with some amendments:

Be it therefore enacted(d)

PART I.

Preliminary.

I. This Act may be cited as the Municipal Corporations Act 1882.

Shor title.

II. This Act shall be divided into Parts, as follows :

Division of
Act into parts.

Part I.—Preliminary.

Part II.—Constitution and government of borough.

Part III.—Preparations for and procedure at elections.

Part IV.—Corrupt practices and election petitions.

Part V.—Corporate property and liabilities.

Part VI.—Charitable and other trusts and powers.

Part VII.—Borough fund : borough rate : county rate.

Part VIII.—Administration of justice.

Part IX.—Police.

Part X.—Freemen.

Part XI.—Grant of charters.

Part XII.—Legal proceedings.

Part XIII.—General.

III. This Act shall not extend to Scotland or Ireland.

Extent.

IV. This Act shall commence and have effect from and immediately after the thirty-first of December, one thousand eight hundred and eighty-two.

Commencement.

V. [*Repeals*]

VI. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporation Acts are under this Act extended by charter, but to no other place.

Application.

VII. (1.) In this Act—

"Borough" means, unless a contrary intention appears, a city or town to which this Act applies :

Interpretation
and construction.

more or less fully referred to in the notes to those enactments including the Local Government Act, 1894. It seems, therefore, unnecessary and would be also for want of space almost impossible, to set out in full all parts of this Act having a bearing upon the subject of this Work. Accordingly only such parts are herein set out as have not already been sufficiently referred to.

For purposes of convenience a list is here subjoined of the sections already sufficiently referred to as above stated :—

S. 11, *ante*, p. 716, note (d) ; s. 12, *ante*, p. 716, note (d), and p. 739, note (a) ; ss 25—27, *ante*, p. 325, note (a) to section 246 of the Public Health Act, 1875 ; s. 28, *ante*, p. 929, note (i) ; ss. 34 and 35, *ante*, p. 746, note (b) ; s. 36, *ante*, p. 746, note (e) ; s. 37, *ante*, p. 746, note (d) ; s. 39, *ante*, p. 739, note (a), and 743 note to section 46 (6) of the Local Government Act, 1894 ; s. 40, *ante*, p. 746, note (e) ; s. 56, *ante*, p. 747, note (f) ; s. 58, *ante*, p. 745, notes to section 48 (3) of the Local Government Act, 1894 ; s. 62, *ante*, p. 325, note (a) to section 246 of the Public Health Act, 1875 ; s. 63, *ante*, p. 737, note to section 43 of the Local Government Act, 1894 ; s. 66, *ante*, p. 746, note (e) ; ss. 74 and 75, *ante*, p. 745, notes to section 48 (3) of the Local Government Act, 1894 ; s. 140, *ante*, p. 746, note (a).

(d) As to the omission of this clause, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Appendix.

- “Municipal corporation” means the body corporate constituted by the incorporation of the inhabitants of a borough :
- “Municipal Corporations Act, 1835,” means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September, one thousand eight hundred and thirty-five :
- “Municipal Corporations Acts” means this Act and any Act to be passed amending this Act ;
- “Burgess” includes citizen :
- “Corporate seal” means the common seal of a municipal corporation :
- “Corporate office” means the office of mayor, alderman, councillor, elective auditor : (a)
- “Corporate land” means land belonging to or held in trust for a municipal corporation :
- “Municipal election” means an election to a corporate office :
- “Parliamentary borough” means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large :
- “Parliamentary election” means an election of a member to serve in Parliament :
- “Parish” means any place for which a separate poor rate is or can be made : (b)
- “Overseers” means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers :
- “County” does not include a county of a city or county of a town but includes a riding, parts, division, or liberty of a county :
- “Trustees” means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated :

* * * * *

- “Justice” means one of Her Majesty’s justices of the peace :
- “Borough civil court” means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court :

* * * * *

- “Schedule” means schedule to this Act, and “Part” means Part of this Act :

* * * * *

- (2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.
- (3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.
- (4.) The schedules shall be read and have effect as if they were part of this Act.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

* * * * *

Bye-laws.(c)

Power of council to make bye-laws.

XXIII. (1.) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, (d) and for prevention and suppression of nuisances not already punishable in a summary manner by virtue

(a) Revising assessors, who were also here originally included, are now abolished by 51 & 52 Vict. c. 10, s. 4.
(b) See 52 & 53 Vict. c. 63, s. 5.
(c) See sections 182—188 inclusive of the Public Health Act, 1875, ante, p. 256. See also section 341 of that Act, ante, p. 423.
(d) See particularly sections 47, 50, and 171 of the Public Health Act, 1875, ante, pp. 74, 76, 235.

Appendix.

of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2.) Such a bye-law shall not be made unless at least two-thirds of the whole number of the council are present.

(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

(5.) Any offence against such a bye-law may be prosecuted summarily.(e)

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875;(f) and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances. 38 & 39 Vict. c. 55.

XXIV. The production of a written copy of a bye-law made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the bye-law.(g) Evidence of bye-laws.

* * * * *

PART IV.(h)

CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

LXXVII. In this part—

“Bribery,” “treating,” “undue influence,” and “personation,” include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections :(i) Definitions.

* * * * *

“Candidate” means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office :

* * * * *

“Voter” means a burgess or a person who votes or claims to vote at a municipal election :

(e) But the council cannot summon offenders before them to answer complaints of offences against the bye-laws. *Wiseman v. Manchester (Mayor, &c. of)*, 3 T. L. R. 12.

(f) See this section, *ante*, p. 259.

(g) See section 186 of the Public Health Act, 1875, *ante*, p. 258, and *Drew v. Harlow*, *ante*, p. 259.

(h) It is necessary to include this Part in the present Work, as by section 48 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), it now applies to elections of urban district councillors for districts not being boroughs and of rural district councillors. The rules made under this Act are also appended.

(i) See the definition of these offences, *post*, p. 1194.

Appendix.

Election court" means a court constituted under this Part for the trial of an election petition :

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election :

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868 :

"Prescribed" means by general rules made under this Part :

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.(a)

* * * * *

Avoidance of election for general corruption.

LXXXI. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

* * * * *

Striking off votes.

LXXXV. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.(b)

Personation.

LXXXVI. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.(c)

Election Petitions.

Power to question municipal election by petition.

LXXXVII. (1.) A municipal election may be questioned by an election petition on the ground—

- (a.) That the election was as to the borough or ward wholly avoided by general bribery,(d) treating,(e) undue influence, or personation ; or
- (b.) That the election was avoided by corrupt practices or offences against this part committed at the election ; or
- (c.) That the person whose election is questioned was at the time of the election disqualified ;(f) or
- (d.) That he was not duly elected by a majority of lawful votes.(g)

(a) For the application of these definitions to elections of urban district councillors for districts not being boroughs and of rural district councillors, see 47 & 48 Vict. c. 70, s. 36, *post*, and 56 & 57 Vict. c. 73, s. 48 (3).

(b) As to the striking off of the votes of persons guilty of illegal practices or payments, see 47 & 48 Vict. c. 70, s. 22, *post*.

(c) See sections 85—89 of the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), and section 24 of the Ballot Act, 1872 (35 & 36 Vict. c. 33).

(d) A single case of bribery avoids an election. *Norwich Election Petition*, 54 L. T. (N.S.) 625. To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery. *Packard v. Collings*, 54 L. T. (N.S.) 619.

(e) Treating is not the entertainment of equals by equals, but of an inferior by a superior with the object of securing the goodwill of the inferior. *Norwich Election Petition*, *supra*.

(f) At an election of councillors in a borough the returning officer does not decide upon the qualification of the candidate ; that can only be done by petition under this section. *Pritchard v. Bangor (Mayor, &c., of)*, 13 App. Cas. 241 ; 57 L. J. Q. B. 313 ; 58 L. T. (N.S.) 502 ; 37 W. R. 103 ; 52 J. P. 564. The disqualification here mentioned is one which existed at the time of the election. If a person becomes disqualified after election the proper remedy is by *quo warranto*. *Howes v. Turner*, 1 C. P. D. 670 ; 45 L. J. C. P. 550 ; 35 L. T. (N.S.) 58 ; 40 J. P. 680.

(g) An election may also be questioned for illegal practices : 47 & 48 Vict. c. 70, s. 25, *post*. A petition may be presented under this section against some only of the persons returned, though the ground of the petition is one affecting the validity of the election as a whole ; and the court can in such petition declare the persons so petitioned against not to have been duly elected. *Line v. Warren*, 14 Q. B. D. 548 ; 54 L. J. Q. B. 291 ; 49 J. P. 516.

A petition, presented under sub-section (1) (d), involves a scrutiny. Where a returning officer improperly allowed an objection to a nomination, it was held that a petition would lie under this head, for if the nomination had not been rejected, the votes might have been differently given : *Budge v. Andrews*, 3 C. P. D. 510 ; 47 L. J. Q. B. 586 ; 39 L. T. (N.S.)

(2.) A municipal election shall not be questioned on any of those grounds except **Appendix.** by an election petition.(h)

LXXXVIII. (1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election. Presentation of petition.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.(i)

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer(k) shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices,(l) and specifically alleges that a payment of money or other reward has been made or promised since the election of a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

LXXXIX. (1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent. Security for costs.

166. If an elector having notice or knowledge of the disqualification or a candidate wilfully votes for him, his vote is thrown away, but knowledge of the fact which creates a legal disqualification does not involve knowledge that the candidate is legally disqualified. In the case of *Beresford Hope v. Lady Sandhurst*, 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. (N.S.) 150; 37 W. R. 548; 53 J. P. 805, it was held that votes given for a woman at a county council election were thrown away.

(h) Where this section applies there is no remedy by *quo warranto*. *Reg. v. Morton* [1892], 1 Q. B. 39; 61 L. J. Q. B. 39; 65 L. T. (N.S.) 611; 40 W. R. 109; 56 J. P. 105; 8 T. L. R. 50. And see *Reg. v. Miles*; *Ex parte Cole*, 64 L. J. Q. B. 420; 72 L. T. (N.S.) 502; 43 W. R. 445; 59 J. P. 407; 11 T. L. R. 320.

(i) An unsuccessful candidate at an election cannot be made a respondent to a petition, although he coalesced for the purposes of the election with two successful candidates, so as to be responsible equally with them for any acts done by any of the three in furtherance of the common purpose. *Lovering v. Dawson*, L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. (N.S.) 819.

At a municipal election A. and B. were candidates for the office of councillor. A. obtained a majority of votes over B., and was declared elected, but refused to serve. B. thereupon claimed to have been elected, and having made the necessary declaration, acted on several occasions as councillor. A petition was presented against both A. and B., and both of them gave notice of their intention not to oppose the petition. No notice of A.'s disqualification was given to the electors. On an application by B. to the court that his name might be struck out of the petition, the court refused the application, holding that he was properly made a respondent. *Yates v. Leach*, L. R. 9 C. P. 605; 43 L. J. C. P. 377; 30 L. T. (N.S.) 790. As to making the returning officer a respondent, see *Harmon v. Park*, 6 Q. B. D. 323; 50 L. J. Q. B. 227; 44 L. T. (N.S.) 81; 29 W. R. 750; 45 J. P. 436; *Wilson v. Ingham*, 72 L. T. (N.S.) 796; 43 W. R. 621; 59 J. P. 611; *Cirencester*, Day's El. Cas. 3.

(k) Prescribed here means prescribed by general rules made under this part (sections 77 and 100); and see 47 & 48 Vict. c. 70, s. 34.

(l) For the corresponding provision as to illegal practices, see 47 & 48 Vict. c. 70, s. 25, *post*. That section also provides that any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court, within the time within which a petition complaining of the election on the ground of that illegal practice can, under that section, be presented. The court cannot after the period of twenty-one days here mentioned allow an amendment which would practically amount to a new petition as by adding a charge of treating. *Clark v. Lowley*, 52 L. J. Q. B. 321; 48 L. T. (N.S.) 762; 31 W. R. 551; 47 J. P. 551.

Appendix.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner.(a) either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner(a) serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5.) An objection to a recognisance shall be decided in the prescribed manner.(b)

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

Petition at issue.

XC. On the expiration of the time limited for making objections, or after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

Municipal election list.

XCI. (1.) The prescribed officer(c) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.(c)

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this part the petition shall be deemed to be a separate petition against each respondent.(d)

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Constitution of election court.

XCII. (1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practices as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions. . . . (e)

(a) See note (k), ante, p. 1135, and rule 26, post. Security need not be given for more than 500*l.*, although there are several respondents. *Pease v. Norwood*, L. R. 4 C. P. 235; 38 L. J. C. P. 161. By rule 36, the petitioner or his agent must file an affidavit of the time and manner of the service immediately after such service. The observance of these provisions as to service of the petition is a condition precedent to the trial of the petition. *Williams v. Tenby (Mayor of)*, 5 C. P. D. 135; 49 L. J. C. P. 325; 42 L. T. (N.S.) 187; 28 W. R. 616; 44 J. P. 348.

(b) See note (k), ante, p. 1135. See also rules 27 to 35, post.

(c) See note (k), ante, p. 1135. As to inspection, see rule 39, post.

(d) See *Line v. Warren*, ante, p. 1134.

(e) See 47 & 48 Vict. c. 70, s. 36, sub-sect. (2), post.

Appendix.

(5.) If a commissioner to whom the trial of a petition is assigned, dies or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall, for the purposes of the trial, have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.(f)

XCIII. (1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.(g)

(2.) The place of trial shall be within the borough,(h) except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may, in its discretion, adjourn the trial from time to time,(i) and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election, the court shall, in addition to the certificate and at the same time, report in writing to the High Court as follows :—

(a.) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence ;

(b.) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part ;

(c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.(k)

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(f) The election court is a court of record. See *Reg. v. Maidenhead (Mayor, &c., of)*, *post*. Orders under 47 & 48 Vict. c. 70, s. 28, *post*, cannot be varied under this sub-section. See sub-section (7) of that section.

(g) See Rules 40—43, *post*.

(h) That is the urban district not being a borough or the rural district. Where the allegations of fact in a petition are not in dispute, but are specifically admitted by the respondent, so as to render it unnecessary at the trial to call witnesses from the district in which the election took place, the court may order the petition to be tried in London, on the ground that special circumstances exist, which render it desirable that the petition should be tried elsewhere than in the county or division where the election took place. *Arch v. Bentinck*, 18 Q. B. D. 548 ; 56 L. J. Q. B. 458 ; 56 L. T. (N.S.) 360 ; 35 W. R. 476. The facts that a scrutiny is the only question to be tried, or that it would be less expensive to try elsewhere are not "special circumstances." *Lawson v. Master* [1893], 1 Q. B. 245 ; 62 L. J. Q. B. 231 ; 68 L. T. (N.S.) 60 ; 41 W. R. 221 ; 57 J. P. 806 ; 5 R. 152. See also *Collins v. Price*, 4 C. P. D. 544 ; 49 L. J. C. P. 685.

A formal adjournment is not necessary. See rule 45, *post*.

(i) See, however, 47 & 48 Vict. c. 70, s. 27, *post*.

(k) The court must further report as to illegal practices in manner prescribed by 47 & 48 Vict. c. 70, s. 8, sub-sect. (2), *post*. As to the form of the report, see *Grant v. Pagham (Overseers of)*, 3 C. P. D. 80 ; 47 L. J. C. P. 59 ; 37 L. T. (N.S.) 404 ; 42 J. P. 88 ; and as to its exclusive effect, see cases cited in the note to 46 & 47 Vict. c. 51, s. 38, *post*.

Appendix.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.(a)

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at *nisi prius*.(b)

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election, and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.(c)

(11.) The trial of a petition shall be proceeded with, notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and in the case of a decision by the High Court on a special case, a statement of the decision shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

Witnesses.

XCIV. (1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at *nisi prius*, and shall be liable to the same penalties for perjury.(d)

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the orders shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.(e)

* * * * *

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the

(a) As to the mode of application, see rule 48, *post*. Notwithstanding this sub-section, appeal, if leave be given, lies from a judgment of the Queen's Bench Division to the Court of Appeal. *Line v. Warren*, *ante*, p. 1134. And see *Beresford Hope v. Lady Sandhurst*, *ante*, p. 1135. If no leave be given no appeal lies. *Unwin v. Macmullen* [1891], 1 Q. B. 694; 60 L. J. Q. B. 400; 39 W. R. 712; 55 J. P. 582; 7 T. L. R. 450; *Shaw v. Reckitt* [1893], 2 Q. B. 59; 62 L. J. Q. B. 375; 69 L. T. (N.S.) 327; 41 W. R. 497; 57 J. P. 805.

(b) See *Stepney*, 4 O'M. & H. 36; *Thornbury*, *ib.* 68; *Isaacson v. Durant*, 17 Q. B. D. 54; 55 L. J. Q. B. 331; 54 L. T. (N.S.) 684; 34 W. R. 527; *Ackers v. Howard*, 16 Q. B. D. 739; 55 L. J. Q. B. 273; 54 L. T. (N.S.) 651; 34 W. R. 609; 50 J. P. 519; *Londonderry*, 4 O'M. & H. 103.

(c) In this case the respondent must deliver to the Master six days before the day appointed for trial, a list of the objections to the election upon which he intends to rely, and the Master is to allow inspection and office copies of such list to all parties concerned; and no evidence is to be given by the respondent of any objection not specified in the list, except by leave of the High Court. See rule 8, *post*.

(d) See also rule 54, *post*.

(e) Sub-sections (5) to (8), inclusive, of this section were repealed by 47 & 48 Vict. c. 70, *post*.

trial of civil actions at the assizes, may be allowed to him by a certificate of the election court, or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

Appendix.

XCV. (1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place.^(f) Withdrawal of petition.

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is, in the opinion of the court, induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position, and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

XCVI. (1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners. Abatement of petition.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and

(f) See further as to the withdrawal of a petition, 47 & 48 Vict. c. 70, s. 26, *post*.

The form of notice of application to withdraw a petition is prescribed by rule 58, *post*. The notice of application is to be left at the Master's office, and copies are to be served on the respondent and on the town clerk or clerk of the council, as the case may be, and published in the county or borough to which the petition relates. See rules 59, 60, *post*.

The petitioners, who had presented a petition and subsequently found out their agent's report upon which [the petition was based was untrustworthy, were allowed by the court to withdraw the petition, the Treasury having ascertained by special inquiry that there was no reliable evidence to support it, and having received from the petitioners copies of the reports and details of the subsequent inquiries. On a motion for leave to withdraw a petition, the court has a discretion as to the costs of the parties, and may order them to be paid by the petitioners on the higher scale, and taxed as between solicitor and client. They cannot give costs to the Public Prosecutor. *Pascoe v. Puleston (Deconport Election Petition)*, 54 L. T. (N.S.) 733; 50 J. P. 135; 2 T. L. R. 345.

After a municipal election a petition was presented by an unsuccessful candidate, claiming that he was returned by a majority of lawful votes. The mayor, to save expense, induced the petitioner and the returned candidate to submit the question to the arbitration of the town clerk, who was to recount the votes. On the award being against the petitioner, he asked leave to withdraw the petition, and the court allowed him to do so on payment of the costs, the Public Prosecutor not opposing. *Mallam v. Bean*, 51 J. P. 230; 3 T. L. R. 516. See also *The Lichfield Election Petition*, 9 T. L. R. 92; Day's El. Cas. 8; and *The Halifax Election Petition*, 9 T. L. R. 563; Day's El. Cas. 9.

Appendix. place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.(a)
(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.(b)

Withdrawal
and substitution
of respondents.

XCVII. (1.) If before the trial of an election petition a respondent other than a returning officer—

(a.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b.) Gives the prescribed notice that he does not intend to oppose the petition; the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.(c)

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Costs on
election
petitions.

XCVIII. (1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.(d).

(2.) The costs may be *[taxed in the prescribed manner, but according to the same principles as costs between solicitor and client in an action in the High Court, and may be]* recovered as the costs of such an action, or as otherwise prescribed.(e)

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer shall thereon certify the recognizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition.(f)

(a) As to the notice, see rules 63 and 64, *post*.

(b) See section 89, *ante*, p. 1135.

(c) See rules 64 to 67 relating to the prescribed notice, time, &c. The returning officer may be a respondent if the petition complains of his conduct.

A respondent may cease to hold office through disqualification. The name of a respondent will not be struck out of a petition merely because he has given the prescribed notice under this section. See *Yates v. Leach*, *ante*, p. 1135.

(d) An overloaded petition will be visited with costs, even if it is successful. *Birkbeck v. Bullard*, 54 L. T. (N.S.) 625. When a petition is wholly unfounded the court may order the petitioner to pay the costs of the Public Prosecutor. *Crossman v. Gent-Davis*, 54 L. T. (N.S.) 628. In certain cases the parties may be ordered to pay the expenses of the election court. See section 101, *post*.

The barrister appointed to try the petition has an absolute discretion over the costs. In a case where the petitioner had improperly made an unsuccessful candidate a respondent, it was held that they could not object that he was not a party to the petition so as to deprive the barrister of jurisdiction to make an order upon them for his costs. *Lovering v. Dawson*, L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. (N.S.) 823.

As to the costs on withdrawal of a petition, see *Pascoe v. Puleston (Devonport Election Petition)*, *ante*, p. 1139.

(e) So much of this sub-section as relates to the principles of taxation is repealed. 47 & 48 Vict. c. 70, Schedule 2. See now s. 29 (3) of that Act, *post*. As to the mode of taxation and recovery of the costs, see rule 68, *post*, and *Pare v. Hartshorn*, 31 L. T. (N.S.) 486; 23 W. R. 138.

(f) The prescribed officer is the Master. See rule 1, *post*. A forfeited recognizance

XCIX. (1.) The town clerk(*g*) shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.

Appendix.

Reception of
and attendance
on the election
court.

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer(*h*) shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

C. (1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter general rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon.⁽ⁱ⁾ Rules of procedure and jurisdiction.

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.^(k)

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications as if made under this section.

relating to a parliamentary election petition is dealt with in manner provided by 31 & 32 Vict. c. 125, s. 42.

(*g*) That is, the clerk to the urban district council for a district not being a borough or the clerk to the rural district council. 47 & 48 Vict. c. 70, s. 36.

(*h*) See rule 52, *post*.

(*i*) And see also 47 & 48 Vict. c. 70, s. 30, *post*. The rules now in force are set out after this Part of this Act, *post*, p. 1143.

(*k*) The High Court has no power to entertain an appeal against the decision of a commissioner appointed to inquire into alleged corrupt or illegal practices at an election except on points of law reserved for its decision by way of a case stated by the commissioner. *Ex parte Ayres*, 54 L. T. (N.S.) 296. A petition against the election of members of a local board alleged undue influence by the respondents and their agents, and that corrupt and illegal practices extensively prevailed. The commissioner reported to the High Court that no corrupt practice had been proved against the respondents or otherwise, that illegal practices extensively prevailed, and that the respondents had been guilty of illegal practices; and he certified that the respondents had not been duly elected. On a motion for a new trial or a prohibition, on the ground that the commissioner had exceeded his jurisdiction, it was held that the report was not in excess of the jurisdiction. *Quære*, whether the court has jurisdiction to entertain an appeal from a commissioner. Per STEPHEN, J.: The jurisdiction, if any, ought only to be exercised under extraordinary circumstances, and when necessary that justice should be done. *Marsland v. Heitman (Goole Election Petition)*, 2 T. L. R. 398. See also *Preece v. Harding, post*; *Shaw v. Reckitt, ante*, p. 1138.

Appendix.

Expenses of
election court.

CI. (1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid by the Treasury on their certificate, out of the borough fund or borough rate : (a)

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk (b) for receiving the election court, shall be repaid, wholly or in part to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely) :

(a.) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner ;

(b.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs ; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied. (c)

Acts done
pending a
petition not
invalidated.

CII. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Provisions as to
elections in the
room of persons
unseated on
petition.

CIII. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy ; (d) and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

(a) The expenses will be paid out of the general district rate in cases of petitions against the election of a member of an urban district council for a district not being a borough or of a rural district council. 47 & 48 Vict. c. 70, s. 36, *post*.

(b) See note (g), *ante*, p. 1141.

(c) Upon the trial of a petition against the return of a borough councillor under the Municipal Elections (Corrupt Practices) Act, 1872, the barrister in delivering judgment said that he found the councillor guilty of personal bribery, and that all the costs of the inquiry were to be borne by him, and made an order in writing for the payment by the councillor of certain costs under section 19 of that Act. The written order made no provision for the remuneration and allowances to the barrister and other persons under section 22 (corresponding to the text). The Treasury paid the amount of such remuneration and allowances, and certified the payment to the borough treasurer, and required him to repay them the amount out of the borough fund. A rate was accordingly made and levied. The Treasury afterwards, on receiving from the barrister a letter that he had always intended to visit all the costs upon the councillor, and had said so in giving judgment, cancelled their certificate, and the borough corporation abandoned the rate and returned the sums levied to the ratepayers. Afterwards, the Treasury, finding that the barrister had made no written order for the payment of remuneration and allowances, issued a fresh certificate requiring the borough treasurer to repay them the amount out of the borough fund or rates. These facts being found upon a return to a *mandamus* commanding the treasurer to repay the Treasury, it was held that no valid order had been made by the barrister for the payment of the remuneration and allowances by the councillor ; that the election court was a court of record, and that neither the High Court nor the Court of Appeal on the return could amend the order so as to make it include such payment ; that the act of the Treasury in certifying was not a judicial act, and that they had the power to make a second certificate, and were entitled to a peremptory *mandamus* compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough fund or rates, and compelling the corporation to order such amount to be levied by a borough rate. *Reg. v. Maidenhead (Mayor of)*, 9 Q. B. D. 494 ; 51 L. J. Q. B. 444 ; 46 J. P. 724.

(d) In the case of urban district councils for districts not being boroughs or of rural district councils there must be a new election. 47 & 48 Vict. c. 70, s. 36, *ante*.

CIV. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

Appendix.
Prohibition
of disclosure
of vote.

* * * * *

GENERAL RULES.

The following is the text of the general rules for the effectual execution of Part IV. of "The Municipal Corporations Act, 1882," made by Sir Charles Edward Pollock, Knight; Sir Henry Manisty, Knight; and Sir Henry Charles Lopes, Knight, the judges for the time being on the rota for the trial of parliamentary election petitions:—

I. The presentation of a Municipal Election Petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt which may be in the following form:—

Received on the day of at the Master's office a petition touching the election of *A. B.*, alderman, councillor [*&c., as the case may be*], for the borough of , purporting to be signed by [*insert the name of petitioners*].

C. D., Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3) of the Act.

II. A municipal election petition shall contain the following statements:—

(1.) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the High Court or a judge thereof.

IV. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, (as the case may be,) and shall be signed by all the petitioners.

V. The following form, or one to the like effect, shall be sufficient:—

In the High Court of Justice,
"The Municipal Corporations Act, 1882."

Election for [*state the place and office for which election held*] holden on the day of A.D.

The petition of *A.* of [*or of A. of* , and *B.* of , as the case may be] whose names are subscribed.

1. Your petitioner *A.* is a person who voted [*or had a right to vote, as the case may be,*] at the above election [*or was a candidate at the above election*]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

2. And your petitioners state that the election was holden on the day of A.D. , when *A. B.*, *C. D.*, and *E. F.* were candidates, and that *A. B.* and *C. D.* have been in the usual manner declared to be duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A. B.*, was not duly elected, and that the election was void [*or that the said E. F. was duly elected, and ought to have been returned, or as the case may be*].

(Signed)

A.
B.

VI. Evidence need not be stated in the petition, but the High Court or a judge thereof may order such particulars^(e) as may be necessary to prevent surprise and unnecessary

^(e) An order for particulars of the corrupt practices alleged in a municipal election petition was made at chambers in the following form:—That the petitioners do within a

Appendix. expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered.

VII. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered. (a)

VIII. When the respondent in a petition under the Act complaining of an undue election and claiming the office for some person, intends to give evidence to prove that the election of such party was undue, pursuant to the 93rd section of the Act, sub-section 10, such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

IX. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practice as a solicitor in the High Court of Justice, whom he or they authorise to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to him or them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

X. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing signed by him or on his behalf, appointing a person entitled to practice as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

week deliver to the respondents particulars of all the persons alleged to have been bribed or treated, by whom, and when and where; and of all persons alleged to have been retained or employed as canvassers and by whom, and when and where; and of all persons to whom money was paid or agreed to be paid, on account of the conveyance of voters to the poll, and by whom, and when and where such moneys were paid or agreed to be paid. *Maude v. Lowley*, L. R. 9 C. P. 165; 43 L. J. C. P. 105; 38 J. P. 280. Where a judge in chambers ordered a petitioner to furnish particulars of his charges against the respondent ten clear days before the hearing of the petition, the Divisional Court refused to interfere with the order. *Barrow-in-Furness Election Petition*, 2 T. L. R. 356. The ordinary time for delivery of particulars is seven days before the trial. *Lenham v. Barber*, 10 Q. B. D. 293; 52 L. J. Q. B. 312; 48 J. P. 23. See also *Clarke v. Wallond*, 52 L. J. Q. B. 321. But this is not a hard and fast rule, and in determining whether there are special circumstances upon which it will act in extending the time the court will take into consideration the size and nature of the constituency, the population and the number of voters, and also the number of witnesses whom it is proposed to call. *Rushmere v. Isaacs* [1893], 1 Q. B. 118; 41 W. R. 124; 57 J. P. 790; 5 R. 88. The respondent to a petition in which the seat is claimed upon a scrutiny is not entitled to obtain particulars under this rule, but rule 7 applies exclusively to such a case. *Munro v. Balfour* [1893], 1 Q. B. 113; 67 L. T. (N.S.) 526; 41 W. R. 143; 57 J. P. 789; 5 R. 23.

(a) The trial of a municipal election petition was appointed for the 20th January. A list of objections was tendered at the Rule Office of the Common Pleas on the 13th January, and refused on the ground that it was too late, and it was taken away by the person tendering it. On the 14th a list of objections were left at the Rule Office, and one was also delivered to the respondent. It was held that the list was not delivered in due time according to the rule, and that the court had no jurisdiction to order delivery *nunc pro tunc* under the last clause of the rule. *Nield v. Batty*, L. R. 9 C. P. 104; 43 L. J. C. P. 73; 29 L. T. (N.S.) 747; 22 W. R. 407; 38 J. P. 264.

XI. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII. The Master shall upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed, and also the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

XIII. The time for giving notice of the presentation of a petition and of the nature of the proposed security shall be five days, exclusive of the day of presentation.

XIV. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

XV. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

XVI. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

XVII. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

XVIII. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a judge thereof.

XIX. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court, or order of a judge thereof.

XX. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the court or judge may require.

XXI. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

XXII. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

XXIII. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

XXIV. The recognizance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

Appendix.

XXV. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows :—

Be it remembered that on the _____ day of _____, in the year of our Lord, 18____, before me [name and description] came *A. B.*, of [name and description as above prescribed] and acknowledged himself [or severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [or the following sums], (that is to say) the said *C. D.* the sum of £____, the said *E. F.* the sum of £____, the said *G. H.* the sum of £____, and the said *J. K.* the sum of £____, to be levied on his [or their respective] good and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [here insert the names of all the petitioners, and if more than one, add or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [or them] relating to the [here insert the name of the borough] which shall become payable by the petitioner [or petitioners, or any of them] under the Municipal Corporations Act, 1882, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[Signature of sureties.]

Taken and acknowledged by the above-named [name of sureties] on the _____ at _____, before me,

C. D.

A justice of the peace [or as the case may be].

XXVI. The recognizance or recognizances shall be left at the Master's office, by or on behalf of the petitioner, in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

The security may (unless the High Court or a judge thereof shall otherwise order on summons) be given to any amount not less than 300*l.*; but the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount, not exceeding with the amount for which security shall have been already given 500*l.* And in default of compliance with such order, no further proceedings shall be had on the petition.

XXVII. The time for giving notice of any objection to a recognizance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or in case of further security within five days after service of notice of the nature thereof, exclusive of the day of such service.

XXVIII. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIX. An objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXX. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

XXXI. If an objection be allowed and the security be declared insufficient, the Master or judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXXII. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general costs of the petition.

XXXIII. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the High Court of Justice that he is seised or possessed of real or personal

estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows : Appendix.

In the High Court of Justice.

Municipal Corporations Act, 1882.

I, *A. B.*, of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts, of the clear value of £ .

Sworn, &c.

XXXIV. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court of Justice.

XXXV. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the Registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.

XXXVI. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof. (*a*)

XXXVII. The days mentioned in Rules VII. and VIII., and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

XXXVIII. When the last day for presenting petitions, or filing lists of votes or objections, under Rules VII. and VIII., or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day ; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

XXXIX. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

XL. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

XLI. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

XLII. The notice of trial may be in the following form :—

Municipal Corporations Act, 1882.

Election petition of .

Borough of .

Take notice that the above petition [*or petitions*] will be tried at
on the . day of . , and on such other subsequent days as may be
needful.

Dated the .

Signed, by order,

A. B.,

The Master appointed under the above Act.

(*a*) See *Williams v. Tenby (Mayor, &c., of)*, *ante*, p. 1136.

Appendix.

XLIII. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

XLIV. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

XLV. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

XLVI. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

XLVII. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the High Court of Justice, or a judge, may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order.

The court or judge may also make such order as to costs as may be just.

XLVIII. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a judge thereof.

XLIX. The title of the court held for the trial of a municipal election petition, may be as follows :—

“Court for the trial of a municipal election petition for the borough of
[or as may be] between petitioner and respondent,”

and it shall be sufficient so to entitle all proceedings in that court.

L. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister ; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

LI. The Commissioner may appoint a proper person to act as crier and officer of the court.

LII. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

LIII. The amount to be paid to any witness whose expenses shall be allowed by the Commissioner trying the petition shall be ascertained and certified by the registrar ; or in the event of his becoming incapacitated from giving such certificate, by the Commissioner.

LIV. The order of the court to compel the attendance of a person as a witness may be in the following form :—

Court for the trial of a municipal election petition for [complete the title of the court] the day .

To A.B. [describe the person]. You are hereby required to attend before the court above at [place] on day of , at the hour of [or forthwith, as the case may be], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand, A.B.,

The Commissioner to whom the trial of the said petition is assigned.

LV. In the event of its being necessary to commit any person for contempt, the warrant may be as follows : Appendix.

At a court holden on at for the trial of a municipal election petition for the borough of before *A. B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Municipal Corporations Act, 1882."

Whereas *C. D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C. D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C. D.* may be found, shall take the said *C. D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler, thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C. D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the day of

A. B.

A. B.

LVI. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant may be sufficient without further particularity, and shall and may be executed by the person to whom it is directed or any or either of them.

LVII. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Municipal Corporations Act, 1882, as a judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any judge of the High Court.

LVIII. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Municipal Corporations Act, 1882.

Borough of Petition of [*state petitioners*] presented
day of .

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of .

(Signed)

LIX. The notice of application for leave to withdraw shall be left at the Master's office.

LX. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall cause the same to be published in the borough to which it relates.

The following may be the form of such notice :—

Municipal Corporations Act, 1882.

In the election petition for in which is petitioner
and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice, that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

LXI. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application if in fact made at the hearing.

Appendix.

LXII. The time and place for hearing the application shall be fixed by a judge, and whether before the High Court, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the court or judge directs.

LXIII. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section 1, of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a judge thereof, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a judge thereof may allow.

LXIV. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

LXV. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

LXVI. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

LXVII. The time for applying to be admitted as a respondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the High Court or a judge thereof may allow.

LXVIII. Costs shall be taxed by the Master, or at his request by any Master or the superior court upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of court, judgment, or order of a judge in the ordinary proceedings in the High Court of Justice, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

LXIX. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

LXX. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April, 1883.

C. E. POLLOCK,
H. MANISTY,
HENRY C. LOPES.

The judges for the time being on the rota for the trial of Parliamentary Election Petitions.

PART V.

CORPORATE PROPERTY AND LIABILITIES.

Working Men's Dwellings.(a)

* * * * *

CXI. (1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the Treasury(b)

Sites for working men's dwellings.

(a) See the Housing of the Working Classes Acts, 1890 and 1894, *ante*, pp. 600, 698, and particularly section 91 of the former Act, *ante*, p. 654.

(b) Now the Local Government Board. See 51 & 52 Vict. c. 41, s. 72.

for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.(c)

(2.) The corporation may make on the land and roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury(b) approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.(c)

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorised by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families ; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

* * * * *

Borough Bridges.

CXIX. (1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council.(d)

Maintenance of borough bridges.

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge,(e) but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4.) The council, with the consent of the Treasury(b) may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed.(f)

PART VI.

CHARITABLE AND OTHER TRUSTS AND POWERS.

* * * * *

Local Acts.

CXXXVI. (1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not

Transfer of powers of local authorities to municipal corporations.

(c) See forms of grants, leases and transfers in the Eighth Schedule, Forms L. M. N. and O., *post*. It will be remembered that section 14 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), affords relief against forfeiture in certain cases.

(d) Such a bridge is a street within the definition contained in section 4 of the Public Health Act, 1875, *ante*, p. 12.

(e) Transferred to county councils by section 3 (viii.), of the Local Government Act, 1888 (51 & 52 Vict. c. 41), and see the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), *post*. See also note (d) on p. 168, *ante*.

(f) See forms of mortgage and transfer in the Eighth Schedule, Forms (P.) and (Q.), *post*.

Appendix. extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

(2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act ; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation ; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.(a)

Power for council to extend local lighting Act.

CXXXVII. (1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions ; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorised to be levied for lighting.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions ; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough.(b)

Exercise of powers under local Acts.

CXXXVIII. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature(c) if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

PART XIII.

GENERAL.

* * * * *

Time.

Time.
Computation of time.

CCXXX. (1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day ; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section

(a) See also sections 10 and 310 of the Public Health Act, 1875, *ante*, pp. 28 and 408
(b) See sections 161—163 of the Public Health Act, 1875, *ante*, p. 224.
(c) *E.g.*, the regulation of the fees of a local Court of Requests. *Palmer v. Powell*, 6 M. & W. 627.

specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Distance.

CCXXXI. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map under the survey commonly known as the Ordnance Survey. (d)

Distance.
Measurement of distances.

Notices.

CCXXXII. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there be no town hall, in such conspicuous place in the borough or ward to which the notice or document relates.

Notices.
Notices on town hall.

Inspection and Copies.

CCXXXIII. (1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom.

Inspection and copies.
Inspection of documents.

(2.) A burgess may make a copy or take an extract from an order of the council for the payment of money.

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5.) The Freeman's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6.) A document directed by this Act to be open for inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7.) If a person having the custody of any document in this section mentioned,—

(a.) Obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

(b.) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

* * * * *

Forms.

CCXL. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

Forms.
Forms in schedule.

* * * * *

Substitution in former Acts.

CCXLII. (1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

Substitution in former Acts.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connection therewith, such provision of this Act as is also mentioned in connection therewith.

Provision for references in unrevoked enactments to 5 & 6 Will. 4, c. 76, &c.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act

(d) See 52 & 53 Vict. c. 63, s. 34; and see *Wright v. Wallasey Local Board*, ante, p. 899.

Appendix. amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require.)

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

THE EIGHTH SCHEDULE.

FORMS.(a)

* * * * *

PART III.

Forms relating to Working Men's Dwellings.(b)

FORM L.

FORM OF GRANT BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of .

Grant No. .

The mayor, aldermen, and burgesses of the borough of ., by virtue and in pursuance of the above-mentioned Act, and in consideration of . paid to them by *A. B.*, of ., hereby grant to the said *A. B.* (herein referred to as the grantee), and his heirs, the site following (that is to say) [*insert description*], with the appurtenances, subject to the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, numbered ., and under the superintendence and to the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, &c., this . day of ., 187 .

(Corporate Seal.)

FORM M.

FORM OF TRANSFER OF GRANT.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of .

Transfer No. .

(Grant No. .)

A. B., of ., by virtue and in pursuance of the above-mentioned Act, and in consideration of . paid to him by *C. D.*, of ., hereby grants and transfers to the said *C. D.* and his heirs the site comprised in the within-written* grant [or the grant No. . under the said Act, dated the . day of ., 187 †], with the appurtenances and with the dwelling and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

In witness whereof, &c., this . day of ., 18 .

A. B. (L.S.)

(a) See section 240, *ante*, p. 1153.

(b) See section 111, *ante*, p. 1150.

* In case of transfer by indorsement.

† In case of transfer by separate deed.

Appendix.

FORM N.

FORM OF LEASE BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of .

Lease No. .

The mayor, aldermen, and burgesses of the borough of , by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A. B.*, of , and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed, hereby lease to the said *A. B.* (herein referred to as the lessee), his executors and administrators, the site following (that is to say) [*insert description*], with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the day of , at the yearly rent (clear of all deductions) of , payable by two equal half-yearly payments on the day of and the day of in every year, the first thereof to be made on the day of , and the last thereof to be made in advance on the day of next before the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half-year up to re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):

1. The lessee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, and numbered , under the superintendence and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts and, in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, &c., this day of , 187 .

(Corporate Seal.)

A. B. (L.S.)

FORM O.

FORM OF ASSIGNMENT OF LEASE.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Lease No.).

A. B., of (herein referred to as the assignor), by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C. D.*, of , hereby assigns to the said *C. D.* (herein referred to as the assignee), his executors and administrators, the site comprised in the within-written lease* [or the lease No. under the said Act, dated the day of , 187 †], with the appurtenances, and with the dwelling and other buildings thereon,

* In case of assignment by indorsement.

† In case of assignment by separate deed.

Appendix. for the residue of the term of _____ years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this _____ day of _____, 187 .

A. B. (L.S.)
C. D. (L.S.)

PART IV.

Forms relating to Borough Bridges.(a)

FORM P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of _____ Mortgage No. _____.

We, the mayor, aldermen, and burgesses of the borough of _____, by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of _____ paid to them by A. B., of _____, for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of _____ doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said A. B., his executors, administrators, and assigns, from the day of the date hereof, until the said sum of _____, with interest at the rate of _____ per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of _____ at [place of payment].

In witness whereof, &c., this _____ day of _____, 187 .

(Corporate Seal.)

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of _____ Transfer No. _____ (Mortgage No. _____.)

I, A. B., of _____, in consideration of the sum of _____ paid to me by C. D., of _____, do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage, dated this _____ day of _____, and made by the mayor, aldermen, and burgesses of the borough of _____, under the above-mentioned Act, for securing the sum of _____ and interest thereon at _____ per centum per annum [or, if the transfer is by indorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this _____ day of _____, 187 .

A. B. (L.S.)

(a) See section 119, ante, p. 1151.

THE NINTH SCHEDULE.

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.(b)

PART I.

General References.

* * * * *

9 & 10 Vict. c. 74.—An Act to encourage the establishment of public baths and wash-houses (section 1).(c)

* * * * *

20 & 21 Vict. c. 81.—An Act to amend the Burial Acts.(d)

* * * * *

26 & 27 Vict. c. 13.—An Act for the protection of certain gardens or ornamental grounds in cities and boroughs.(e)

* * * * *

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A).(f)

* * * * *

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2).(g)

35 & 36 Vict. c. 38.—The Infant Life Protection Act, 1872 (First Schedule).(h)

35 & 36 Vict. c. 91.—An Act to authorise the application of funds of municipal corporations and other governing bodies in certain cases.(i)

* * * * *

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4).(k)

38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 34).(l)

39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37).(m)

* * * * *

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38).(n)

PART II.

Particular References.

14 & 15 Vict. c. 55.—An Act to amend the law relating to the expenses of prosecutions, and to make further provisions for the apprehension and trial of offenders in certain cases.

In section 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870.

In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

(b) See section 242, *ante*, p. 1153.(c) *Ante*, p. 846.(d) The Burial Act, 1857, *ante*, p. 925.(e) The Town Gardens Protection Act, 1863, *ante*, p. 938.(f) *Ante*, p. 968.(g) *Ante*, p. 989.(h) *Ante*, p. 997.(i) The Borough Funds Act, 1872, *ante*, p. 1000.(k) *Ante*, p. 3.(l) *Ante*, p. 1026.(m) *Ante*, p. 1044.(n) *Ante*, p. 1100.

Appendix.

THE ELECTRIC LIGHTING ACT, 1882.

(45 & 46 VICT. CAP. 56.)(a)

An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland. [18th August, 1882.]

	*	*	*	*	*	*
Short title.	I. This Act may be cited for all purposes as the Electric Lighting Act, 1882.					
Application of Act.	II. The provisions of this Act shall apply to every local authority, (b) company, or person who may by this Act or any license or provisional order granted under this Act, or by any special Act to be hereafter passed, be authorised to supply electricity within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act; and every such license, provisional order, and special Act, is in this Act included in the expression "license, order, or special Act."					
Granting of licenses authorising the supply of electricity.	<p>III. The Board of Trade may, from time to time, license any local authority as defined by this Act (b) or any company or person, to supply electricity under this Act for any public or private purposes (c) within any area, subject to the following provisions:—</p> <ol style="list-style-type: none"> (1.) The consent of every local authority (b) having jurisdiction within the area or any part of the area within which a supply is licensed to be furnished, shall be required to the application for a license, which consent such local authority is hereby authorised to give, with such conditions (if any) as, subject to the approval of the Board of Trade the local authority may prescribe: (2.) A license shall be for any period not exceeding seven years, but may, at or after the expiration of such license, be renewed from time to time for a like period with such consent as above mentioned upon such terms and conditions as the Board of Trade may determine: (3.) "Public purposes" shall mean lighting any street or any place belonging to or subject to the control of the local authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied: (4.) "Private purposes" shall include any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any telegram: (5.) Every local authority, company, or person applying for a license shall publish notice of their application by public advertisement in such manner and including such particulars as the Board of Trade may from time to time direct or approve; (d) and such license shall not be granted by the Board of Trade until after the expiration of a period of three months from the date of the first publication of such advertisement, nor until opportunity has been given to all parties interested to make representations or objections to the Board of Trade with reference to the application: (6.) No application for a license shall be made by any local authority except in pursuance of a resolution to be passed at a special meeting of the local authority, and such special meeting shall only be held after one month's 					

(a) This Act is included in the Appendix, as it confers important powers upon urban and rural sanitary authorities.

(b) See the definition of this term in section 31, *post*. It includes urban and rural sanitary authorities.

(c) This phrase is explained by sub-sections 3 and 4, *infra*.

(d) See the Rules made by the Board of Trade, *post*.

previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given :^(e)

Appendix.

- (7.) A license may, subject to the provisions of this Act, be granted to a local authority authorising them to supply electricity within any area although the same or some part thereof may not be included within their own district :
- (8.) The license may make such regulations as to the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive, and for enforcing the performance by the licensees of their duties in relation to such supply, and for the revocation of the license where the licensees fail to perform such duties, and generally may contain such regulations and conditions as the Board of Trade may think expedient :
- (9.) Where in any area or part of an area in which any undertakers are authorised to supply electricity under any license the undertakers are not themselves the local authority, the license may contain any provisions and restrictions for enabling the local authority within whose jurisdiction such area or part of an area may be to exercise any of the powers of the undertakers under this Act with respect to the breaking up of any street repairable by such local authority within such area or part of an area,^(f) and the alteration of the position of any pipes or wires being under such street,^(g) and not being the pipes or wires of the undertakers, on behalf and at the expense of the undertakers, and for limiting the powers and liabilities of the undertakers in relation thereto, which the Board of Trade may think expedient.

IV. The Board of Trade may, from time to time, by provisional order, authorise any local authority, company, or person to supply electricity for any public or private purposes within any area, *without requiring such consents as are required to the granting a license under this Act*,^(h) and for such period, whether limited or unlimited, as the Board of Trade may think proper, but in all other respects subject to the like provisions as in the last section contained with respect to licenses, and subject also to the following provisions :—

Granting of provisional orders authorising the supply of electricity.

- (1.) No provisional order shall authorise the supply of electricity by any undertakers within the district of any local authority (not being themselves the undertakers), unless notice that such provisional order has been or is intended to be applied for has been given to such local authority by the applicants in such manner as the Board of Trade may direct or approve on or before the first day of July in the year in which such application is made ;⁽ⁱ⁾ provided that in the case of any application made during the present year such notice shall be deemed to have been given in due time if the same is given within one month after the passing of this Act :
- (2.) The Board of Trade may submit to Parliament for confirmation any provisional order granted by it in pursuance of this Act, but any such order shall be of no force unless and until it is confirmed by Act of Parliament :
- (3.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills :
- (4.) Any Act confirming any provisional order granted in pursuance of this Act, may, on the application of the undertakers thereby authorised to supply electricity, be repealed, altered, or amended by any subsequent provisional order granted by the Board of Trade and confirmed by Parliament.

^(e) A special meeting of the council of a borough is called pursuant to the Municipal Corporations Act, 1882, sched. 2 ; of an urban district council other than a borough council and of a rural district council pursuant to the Public Health Act, 1875, sched. 1, *ante*, p. 426, as applied by section 59 of the Local Government Act, 1894, *ante*, p. 755.

^(f) See section 12, *post*.

^(g) See section, 15, *post*.

^(h) These words are practically repealed by 51 & 52 Vict. c. 12, s. 1, which provides that the consent of the local authority shall be required save as therein provided.

⁽ⁱ⁾ See the Rules of the Board of Trade, *post*.

Appendix.

Making of
rules as to
application, &c.,
under Act.

V. The Board of Trade may from time to time make, and when made may rescind, alter, or repeal rules in relation to the applications for licenses or provisional orders, and to the payments to be made in respect thereof, and to the publication of notices and advertisements, and the manner in which and the time within which representations or objections with reference to any application are to be made, and to the holding of local inquiries in such cases as they may think it advisable, and to any other matters arising under this Act.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the next session of Parliament.(a)

Regulations to
be inserted in
licenses, &c.

VI. The undertakers shall be subject to such regulations and conditions as may be inserted in any license, order, or special Act affecting their undertaking with regard to the following matters :—

- (a.) The limits within which and the conditions under which a supply of electricity is to be compulsory or permissive ;
- (b.) The securing a regular and efficient supply of electricity ;
- (c.) The securing the safety of the public from personal injury, or from fire or otherwise ;
- (d.) The limitation of the prices to be charged in respect of the supply of electricity ;
- (e.) The authorising inspection and inquiry from time to time by the Board of Trade and the local authority ;
- (f.) The enforcement of the due performance of the duties of the undertakers in relation to the supply of electricity by the imposition of penalties or otherwise, and the revocation of the license, order, or special Act where the undertakers have, in the opinion of the Board of Trade, practically failed to carry the powers granted to them into effect within a reasonable time, or discontinued the exercise of such powers ; and
- (g.) Generally with regard to any other matters in connection with the undertakings.

Provided always, that the Board of Trade may, from time to time, make such regulations as they may think expedient for securing the safety of the public from personal injury or from fire or otherwise,(b) and may from time to time amend or repeal any regulations which may be contained in any such license, order, or special Act in relation thereto ; and any regulations so made or amended by the Board of Trade shall, from and after the date thereof, have the like effect in every respect as though they had been originally inserted in the license, order, or special Act authorising the undertaking, and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal or any proceeding or remedy which might have been had in relation thereto.

Any local authority within any part of whose district electricity is authorised to be supplied under any license, order, or special Act may, in addition to any regulations which may be made under the preceding provisions of this section for securing the safety of the public, from time to time make, rescind, alter, or repeal bye-laws(c) for further securing such safety ; and there may be annexed to any breach of such bye-laws such penalties to be recovered in a summary manner as they may think necessary : Provided, always, that no such bye-laws shall have any force or effect unless and until they have been confirmed by the Board of Trade and published in such manner as the Board of Trade may direct.

(a) See the Rules of the Board of Trade, *post*.

(b) See these regulations, *post*.

(c) These bye-laws will not be subject to the provisions of the Public Health Act, 1875, as to bye-laws.

VII. Any expenses incurred by a local authority under this Act, and not otherwise provided for, including any expenses incurred in connection with the obtaining by them, or any opposition to the obtaining by any other local authority, company, or person, of any license, order, or special Act under this Act, may be defrayed out of the local rates as defined in the schedule to this Act,^(d) and the local authority may from time to time cause such rates to be levied as may be necessary for the purpose of defraying such expenses; provided that where such local authority is a rural sanitary authority such expenses shall be deemed to be special expenses within the meaning of the Public Health Act, 1875.^(e)

Appendix.

Expenses of
local authority.

38 & 39 Vict,
c. 55.

VIII. A local authority authorised to supply electricity by any license, order, or special Act may from time to time borrow money on such security, with such consent and subject to such provisions and restrictions with respect to borrowing and the repayment of loans, as are in the schedule to this Act in that behalf mentioned,^(f) and the money so borrowed shall be deemed to be borrowed under the enactments subject to the provisions and restrictions of which it is borrowed, and the accounts of all receipts and expenditure by the local authority in pursuance of this Act, or any license, order, or special Act, shall be subject to such audit as is in the said schedule in that behalf mentioned:^(g) Provided always, that any moneys borrowed under this section by the local authority of any district to which the Local Loans Act, 1875,^(h) extends, may, if it is thought fit, be borrowed in manner provided by that Act; and in the construction of the said Act for the purposes of this Act the expression "prescribed" means prescribed by any conditions imposed by the authority whose consent is required to borrowing under this section.

Power of local
authority to
borrow money.

38 & 39 Vict.
c. 83.

Where any local authority is authorised by any Act to raise any money which they may be empowered to borrow for certain purposes by the issue of corporation or other stock, any money which a local authority may be authorised to borrow under this section may, if it is thought fit, be raised by them by the issue of such stock as aforesaid.

This section shall not apply to the mayor, commonalty, and citizens of the city of London or to the Metropolitan Board of Works, except in so far as the Metropolitan Board of Works may be concerned in the borrowing of any money by any vestry or district board.

IX. The undertakers shall on or before the twenty-fifth day of March in every year fill up an annual statement of accounts of the undertaking made up to the thirty-first day of December then next preceding; and such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade.

Accounts.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling a copy.

In case the undertakers make default in complying with the provisions of this section, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

X. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act, and of any license, order, or special Act authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands by agreement, construct such works, acquire such licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply.⁽ⁱ⁾

General
powers of
undertakers
under license
or provisional
order.

^(d) See the schedule, *post*. In urban districts the local rate is the general district rate; in rural districts it is the rate out of which special expenses (*see ante*, p. 308) are payable.

^(e) See section 229 of that Act, *ante*, p. 308.

^(f) These provisions are contained in the Public Health Act, 1875, ss. 233, 234, 236—239, *ante*, p. 314.

^(g) That is, the audit prescribed by the Public Health Act, 1875, ss. 246—248, *ante*, p. 325.

^(h) See the Act, *ante*, p. 1018.

⁽ⁱ⁾ In the case of *In re St. Nicholas Cole Abbey and St. Benet Fink* [1893], P. 58, an electric lighting company obtained a faculty for constructing chambers for the storage and

Appendix.

Power for local authority to contract in certain cases and restrictions on assignments of powers, &c., of undertakers.

XI. Any local authority who have obtained a license, order, or special Act for the supply of electricity, may contract with any company or person for the execution and maintenance of any works needed for the purpose of such supply, or for the supply of electricity within any area mentioned in such license, order, or special Act, or in any part of such area; but no local authority, company, or person shall by any contract or assignment transfer to any other company or person or divest themselves of any legal powers given to them, or any legal liabilities imposed on them by this Act, or by any license, order, or special Act, without the consent of the Board of Trade.

Incorporation of certain provisions of Clauses Consolidation Acts.

XII. The provisions of the following Acts shall be incorporated with this Act; (that is to say,)

10 & 11 Vict. c. 15.

(1.) The Lands Clauses Acts, (a) except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking; and

34 & 35 Vict. c. 41.

(2.) The provisions of the Gasworks Clauses Act, 1847, (b) with respect to breaking up streets for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers; and

(3.) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six of the Gasworks Clauses Act, 1871. (c)

For the purposes of this Act, in the construction of all the enactments incorporated by this section, "the special Act" means this Act inclusive of any license, order, or special Act; and the "promoters" or "undertakers," and the "undertaking," as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Acts, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Act, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant electric line, and "works" meant "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any license, order, or special Act.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts. (d)

Restrictions on breaking up of private streets, railways, and tramways.

XIII. Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf inserted in the license, order, or special Act, or with the written consent of the Board of Trade, and the Board of Trade shall not in any case insert any such special powers in any license or provisional order, or

transformation of electricity under two divided churchyards in the city of London, and it was held that the vesting of one of such churchyards by local Acts in the corporation to the intent that it might for ever remain unbuilt upon and unused for any purpose, except such ornamental purpose as the bishop should approve, did not preclude the court from granting the faculty.

(a) These Acts are 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18; 46 & 47 Vict. c. 15, and are included in this Appendix.

(b) *Ante*, p. 863. See the provisions in 51 & 52 Vict. c. 12, s. 4, *post*, as to the restrictions in placing electric lines in, over, &c., streets.

(c) *Ante*, p. 979.

(d) That is to say in manner provided by the Summary Jurisdiction Act, 1879, ss. 6, 35. See the note to section 251 of the Public Health Act, 1875, *ante*, p. 333.

give any such consent until notice has been given to such authority, company, or person, by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

Appendix.

XIV. Notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised to place any electric line above ground, along, over, or across any street, without the express consent of the local authority,^(e) and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to the provisions of this section, or may themselves remove the same, and recover the expenses of such removal from the undertakers in a summary manner; and where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if they are of opinion that such electric line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order directing and authorising the removal of such electric line by such person and upon such terms as they may think fit.

Restrictions
as to above
ground works.

XV. Subject to the provisions of this Act and of the license, order, or special Act authorising them to supply electricity, and to any bye-laws made under this Act, the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under this Act on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the undertakers and owners, or in case of difference as may be determined in manner prescribed by the license or provisional order authorising the undertakers to supply electricity, or where no such manner is prescribed as may be determined by arbitration, and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local or other public authority, company, or person in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in this section contained with reference to the alteration of the position of any pipes or wires by the undertakers.

Power to
undertakers to
alter position
of pipes and
wires.

XVI. If at any time after the undertakers have placed any works under, in, upon, over, along or across any canal, any person having power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin or other work, and such canal: or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person, and on having reasonable facilities afforded them by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the direction in which the works are to be placed, it shall be determined by arbitration.

Clause for pro-
tection of
canals.

XVII. In the exercise of the powers in relation to the execution of works given them under this Act, or any license, order, or special Act, the undertakers shall cause as little detriment and inconvenience and do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount

Compensation
for damage.

(e) Therefore the case of *Wandsworth Board of Works v. United Telephone Company*, ante, p. 171, will not apply to such wires. Further restrictions are contained in 51 & 52 Vict. c. 12, s. 4, *post*. But wires to which this Act applies are not subject to 53 & 54 Vict. c. 59, ss. 13 and 14. See section 15 of that Act, *ante*, p. 569.

Appendix. and application of such compensation in case of difference to be determined by arbitration.(a)

Undertakers not to prescribe special form of lamp or burner.

XVIII. The undertakers shall not be entitled to prescribe any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, and any license, order, or special Act is used: Provided always that no local authority company, or person shall be at liberty to use any form of lamp or burner or to use the electricity supplied to them for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply of electricity supplied to any other local authority, company, or person by the undertakers, and if any dispute or difference arises between the undertakers and any local authority, company, or person entitled to be supplied with electricity under this Act, or any license, order, or special Act, as to the matters aforesaid, such dispute or difference shall be determined by arbitration.

Obligation on undertakers to supply electricity.

XIX. Where a supply of electricity is provided in any part of an area for private purposes, then except in so far as is otherwise provided by the terms of the license, order, or special Act authorising such supply, every company or person within that part of the area shall, on application, be entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply.

Charges for electricity.

XX. The undertakers shall not, in making any agreements for a supply of electricity, show any undue preference to any local authority, company, or person, but, save as aforesaid, they may make such charges for the supply of electricity, as may be agreed upon, not exceeding the limits of price imposed by or in pursuance of the license, order, or special Act authorising them to supply electricity.

Recovery of charges, &c.

XXI. If any local authority, company, or person neglect to pay any charge for electricity or any other sum due from them to the undertakers in respect of the supply of electricity to such local authority, company, or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied and may, until such charge or other sum, together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid, are fully paid, but no longer, discontinue the supply of electricity to such local authority, company, or person.(b)

Injuring works with intent to cut off supply of electricity.

XXII. Any person who unlawfully and maliciously cuts or injures any electric line or work with intent to cut off any supply of electricity shall be guilty of felony, and be liable to be kept in penal servitude for any term not exceeding five years, or to be imprisoned with or without hard labour for any term not exceeding two years; but nothing in this section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence.

Stealing electricity.

XXIII. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity shall be guilty of simple larceny and punishable accordingly.

(a) See section 28, *post*.

A company authorised by private Act to supply a certain district with electric light committed a nuisance and damage to a public house near their lighting station, by the withdrawal of support caused in digging foundations, and by vibration in working their engines:—Held, that “works” in section 17, as defined by section 32 of this Act, included only what was required to supply electricity and not the actual supply, and, therefore, the case did not fall within section 17, but the company were liable in damages at common law, and to be restrained by injunction. *Shelfer v. City of London Electric Lighting Company*; *Meux’s Brewery Limited v. City of London Electric Lighting Company* [1895], 1 Ch. 287; 64 L. J. Ch. 216; 72 L. T. (N.S.) 34; 11 T. L. R. 137. See also *National Telephone Company v. Baker* [1893], 2 Ch. 186; 62 L. J. Ch. 699; 68 L. T. (N.S.) 283; 57 J. P. 373; 3 R. 318; *Attorney-General v. Pall Mall Electric Lighting Company*, “Times” 13th March, 1895; *Fowler v. Chelsea Electric Supply Company*; *Saudon v. Same*, “Times,” 25th May, 1895.

(b) These charges are recoverable like gas rents, subject to the qualifications contained in the last clause of section 12, *ante*.

XXIV. Any officer appointed by the undertakers may at all reasonable times enter any premises to which electricity is or has been supplied by the undertakers, in order to inspect the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the undertakers, and for the purpose of ascertaining the quantity of electricity consumed or supplied, or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the undertakers, repairing all damage caused by such entry, inspection, or removal.

Appendix.

Power to enter lands or premises for ascertaining quantities of electricity consumed or to remove fittings, &c.

XXV. Where any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the undertakers are placed in or upon any premises not being in the possession of the undertakers for the purpose of supplying electricity under this Act, or any license, order, or special Act, such electric lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be.(c)

Electric lines, &c., not to be subject to distress in certain cases.

XXVI. No alteration in any telegraph line of the Postmaster-General shall be made by the undertakers except subject to the provisions of the Telegraph Act, 1878.

Provision for protection of the Postmaster-General.
41 & 42 Vict. c. 76.

The undertakers shall not in the exercise of the powers conferred by this Act, or by any license, order, or special Act, lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs or the laying of connexions with mains where the direction of the electric lines so laid down crosses the line of the Postmaster-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) the undertakers or their agents not more than twenty-eight nor less than seven clear days before commencing such work shall give written notice to the Postmaster-General specifying the course and nature of the work, including the gauge of any electric lines, and the undertakers and their agents shall conform with such reasonable requirements either general or special as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the said work.

Any difference which arises between the Postmaster-General and the undertakers or their agents with respect to any requirements so made, shall be determined by arbitration.

In the event of any contravention of or wilful non-compliance with this section by the undertakers or their agents the undertakers shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues, or, if the telegraphic communication is wilfully interrupted, not exceeding fifty pounds for every day on which such interruption continues.

Provided that nothing in this section shall subject the undertakers or their agents to a fine under this section, if they satisfy the court having cognisance of the case that the immediate execution of the work was required to avoid an accident, or otherwise was a work of emergency and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the work was done a notice of the execution thereof, stating the reason for executing the same without previous notice.

For the purposes of this section a telegraphic line of the Postmaster-General shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such work, or by any use made of such work.

For the purposes of this section, and subject as therein provided, sections two, seven, eight, nine, ten, eleven, and twelve of the Telegraph Act 1878, shall be

(c) A somewhat similar provision was contained in 10 & 11 Vict. c. 15, s. 14, with reference to which, see *Gaslight and Coke Company v. Hardy*, 17 Q. B. D. 619; 55 L. T. (N.S.) 588; 35 W. R. 50; 51 J. P. 6.

Appendix. deemed to be incorporated with this Act, as if the undertakers were undertakers within the meaning of those sections, without prejudice nevertheless to any operation which the other sections of the said Act would have had if this section had not been enacted. (a)

XXVII. [*Purchase of undertaking by local authority.*](b)

Arbitration.

XXVIII. Where any matter is by this Act, or any license, order, or special Act, directed to be determined by arbitration, such matter shall, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs.

37 & 38 Vict.
c. 40.

Any license or provisional order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, &c., Act, 1874.

Power for
Board of Trade
to relieve gas
undertakers
from obligation
to supply gas
in certain
cases.

XXIX. Where a supply of electricity is authorised in any area by any license, order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any provisional order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand, the Board of Trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade may in their discretion make an order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade in connexion with any such inquiry or order shall be borne and paid by the gas undertakers upon whose application the inquiry or order was made.

Annual report
by Board of
Trade.

XXX. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past.

Definition of
local authority,
&c.

XXXI. In this Act, unless the context otherwise requires, the expressions "local authority" and "local rate" mean, as respects each district set forth in the first column of the schedule to this Act annexed, the authority and rate mentioned opposite to the district in the second and third columns of that schedule; and such schedule, and the notes appended thereto, shall be of the same validity as if enacted in the body of the Act.

Interpretation.

XXXII. In this Act, unless the context otherwise requires—

The expression "electricity" means electricity, electric current, or any like agency:

The expression "electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents:

(a) Section 2 of the Telegraph Act, 1878 (41 & 42 Vict. c. 76), contains certain definitions of expression used in that Act. Section 7 makes provision as to work done in pursuance of special Acts of Parliament which involves alteration in any telegraphic line. Section 8 deals with compensation and fines for injury to any telegraphic line of the Postmaster-General, and for interruption of telegraphic communication. Section 9 enacts a penalty for obstruction. Section 10 provides for the prosecution of offences.

(b) This section was repealed by 51 & 52 Vict. c. 12, s. 2, *post*, which contains substituted provisions as to purchase by the local authority.

Appendix.

The expression "works" means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act.(c)

The expression "company" means any body of persons corporate or unincorporate :

8 & 9 Vict.
c. 18.
23 & 24 Vict.
c. 106.
32 & 33 Vict.
c. 18.

The expression "Lands Clauses Acts" means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 :

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act :(d)

The expression "telegram" has the same meaning as in the Telegraph Act, 1869 :(e)

32 & 33 Vict.
c. 73.

XXXIII. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals. For the protection of mines.

XXXIV. Nothing in this Act shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future session of Parliament. Provision as to general Acts.

XXXV. Nothing in this Act or in any license, order, or special Act, shall affect the exclusive privileges conferred upon the Postmaster-General by the Telegraph Act, 1869, or authorise or enable any local authority, company, or person to transmit any telegram or to perform any of the incidental services of receiving, collecting, or delivering telegrams, or give to any local authority, company, or person, any power, authority, or facility of any kind whatever, in connexion with the transmission of telegrams, or the performance of any of the incidental services of receiving, collecting, or delivering telegrams.(f)

Saving for privileges of Postmaster-General.

* * * * *

(c) See *Meux's Brewery, Limited v. City of London Electric Lighting Company*, ante, p. 1164.

(d) See a further definition of this expression for the purposes of 51 & 52 Vict. c. 12, s. 4, post.

(e) By section 3 of the Telegraph Act, 1869 (32 & 33 Vict. c. 73), the term "telegram" shall mean any message or other communication transmitted or intended for transmission by telegraph. And the term "telegraph" shall, in addition to the meaning assigned to it in the Telegraph Act, 1863, mean and include any apparatus for transmitting messages or other communications by means of electric signals. These definitions include the telephone and telephonic messages. *Attorney-General v. Edison Telephone Company of London*, 6 Q. B. D. 244 ; 50 L. J. Q. B. 145 ; 43 L. T. (N.S.) 697 ; 29 W. R. 428.

(f) See also 51 & 52 Vict. c. 12, s. 4 (5), post. Section 36 relates to Scotland, and section 37 to Ireland. These sections and the parts of the schedule relating to Scotland and Ireland are omitted.

Appendix.

SCHEDULE.
ENGLAND AND WALES.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be Contracted.	Authority whose Consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
The City of London and the liberties thereof.	The Mayor, Commonalty, and Citizens acting by the Commissioners of Sewers.	The consolidated sewers rate.				
Parts of the Metropolis which the Metropolitan Board of Works are authorized to light.	The Metropolitan Board of Works.	The consolidated rate.				
Parish mentioned in Schedule A. to the Metropolitan Management Act, 1855.	The vestry.	The lighting rate or other fund or rate applicable for lighting.	The local rate as herein defined.	The Metropolitan Board of Works.	Those contained in sections one hundred and eighty-three to one hundred and ninety-one (both inclusive) of the Metropolitan Management Act, 1855.	That prescribed by section one hundred and ninety-five of the Metropolitan Management Act, 1855.
District mentioned in Schedule B. to the Metropolitan Management Act, 1855.	The district board.					

Urban sanitary district (1).	The urban sanitary authority (1).	The fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district, or any other fund or rate applicable to fighting under any local Act(a).	The local rate as herein defined and any property of the local authority.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.(c)	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.(d)	In the case of boroughs (2), that prescribed by section two hundred and forty-six of the Public Health Act, 1875, and in the case of other urban sanitary authorities that prescribed by section two hundred and forty-seven of the same Act.(e)
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health Act, 1875.(b)	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.(c)	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.(d)	That prescribed by section two hundred and forty-eight of the Public Health Act, 1875.(e)

NOTES.

(1.) "Urban sanitary authority," "urban sanitary district," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health Act, 1875. (See sections 8-9 of that Act, *ante*.)

(2.) "Borough" means any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intitled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same. [This Act is now repealed, and the Municipal Corporations Act, 1882, is substituted for it.]

(a) See the Public Health Act, 1875, s. 207, *ante*, p. 276.

(b) See the Public Health Act, 1875, s. 229, *ante*, p. 308.

(c) That is the Local Government Board. See the section, *ante*, p. 314.

(d) See these sections, *ante*, pp. 314-321.

(e) See these sections, *ante*, pp. 326-331.

Appendix. THE FOLLOWING ARE THE RULES MADE BY THE BOARD OF TRADE WITH RESPECT TO APPLICATIONS FOR LICENSES AND PROVISIONAL ORDERS, &c., UNDER THE FOREGOING ACTS AS AMENDED BY THE ACTS OF 1888 AND 1890 :—

Consent of Local Authorities.

Rule I. No application for a license or for the renewal of a license will be entertained unless proof of the consent to such application of every local authority having jurisdiction within the proposed area of supply is given to the Board of Trade.

Rule II. No application for a provisional order (other than an application from the local authority of the district) will be entertained by the Board of Trade unless proof of the consent of every local authority having jurisdiction within the proposed area of supply to the grant of the order, or a request from the applicants asking the Board of Trade to dispense with the consent of such local authorities as have not consented, and giving the reasons for such request, is deposited with the Board of Trade within the time limited for proving compliance with the provisions of the Electric Lighting Acts and these rules.

Rule III. At the time of proving the consent of the local authority to an application for a license or renewal of a license, or to the grant of a provisional order, the applicants must deposit with the Board of Trade copies of any agreement entered into with the local authority relating to such consent.

Rule IV. Where the consent of any local authority is required to any application for a license, or the renewal of a license, or to the grant of a provisional order, such consent must be given by a resolution passed at a meeting of the local authority held after previous notice of the same and of the purpose thereof, has been given in the manner in which notices of meetings of such local authority are usually given ; and the fact that such a resolution was duly passed must be proved by a certificate signed by the secretary or clerk to such local authority, reciting copies of the notice and of the resolution, and declaring that the notice was duly given and the resolution duly passed.

Notices.

Rule V. Any local authority, company, or person intending to apply for a license or provisional order must, at the time of lodging their memorial with the Board of Trade in the case of a license, and on or before the 1st November in the case of a provisional order, give notice in writing of their intended application to every local authority, company, or person authorised to supply electricity under statutory powers within the district to which the proposed application refers.

Rule VI. Except in the case of an application by the local authority for the district a provisional order will not be granted by the Board of Trade except to the body or person by whom the notice required by section 4, sub-section (1) of the Electric Lighting Act, 1882, was given.

Rule VII. In any case where a local authority, company, or person is required by the Acts to give notice to the local authority of the district, "in such manner as the Board of Trade may direct or approve," such notice must be given in writing, and must be served, either by leaving the same at the offices of the said local authority on or before the appointed day or by forwarding the same by post in a registered letter, so that the same would in ordinary course of post be delivered on or before the appointed day.

Application and Deposits.

Rule VIII. Every application for a license or provisional order must be made by memorial signed or sealed by, or on behalf of the applicants, headed with a short title descriptive of the proposed undertaking (corresponding with that at the head of the advertisement hereinafter mentioned, *see* Rule XIII.), addressed to the Board of Trade. With the memorial must be deposited six copies of the draft license or order, as applied for, with the schedule or schedules (if any) referred to therein.

Rule IX. The deposited copies of the draft license or order must be in print. They must be printed on one side only, and each schedule annexed must begin a new page.

The names and addresses of the parliamentary agents or solicitors for the license or order must be printed on the outside of the draft.

There must be a notice at the end of the draft stating that objections are to be made by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it "Electric Lighting Acts," and that such letter is to be sent to the Board of Trade in the case of a provisional order on or before the 15th January next ensuing, and in the case of a license within two months from the date of the newspaper containing the first advertisement of the application, and that a copy of such objections is to be forwarded to the parliamentary agent or solicitors for the license or order.

Appendix.

The draft must contain amongst other things—

1. The address and description of the applicants.
2. A description of the proposed area of supply.
3. A statement of the purposes for which a supply is to be given, viz., any or all of the public or private purposes specified in section three of the Electric Lighting Act, 1882.
4. Provisions concerning the breaking up of streets, railways, and tramways, where powers are sought to be obtained by the license or order for those purposes.
5. Conditions of supply.
6. Provisions for securing the safety of the consumer and of the public from injury by shock, fire, or otherwise.
7. Provisions for enforcing the performance by the undertakers of their duties in relation to the supply of electricity, and for the revocation of the license or order where the undertakers fail to perform such duties.

The applicants must also deposit a sufficient number of printed copies of the draft license or order at offices in London and within the proposed area of supply to be specified in the advertisement hereinafter mentioned, *see* Rule XIII., such copies to be there furnished to all persons applying for them, at a price not more than one shilling each.

Rule X. The applicants must also deposit at the Board of Trade a published map of the district on a scale of not less than six inches to a mile, or if there is no published map, then the best map procurable, showing the boundaries of the proposed area of supply, and the streets in which it is proposed that electric lines should be laid down within a specified time—

They must also deposit a copy of the said map for public inspection—

In England or Ireland, in the office of the clerk of the peace for every county, riding, or division, and of the local authority of every district,

In Scotland, in the office of the principal sheriff clerk, for every county, district, or division, and of the local authority of every district,

in which the proposed area of supply or any part thereof is situate.

Such deposits must be made in the case of a license when the memorial is lodged and in the case of a provisional order on or before the 30th November.

Rule XI. There must also be deposited with the memorial—

1. A list of the local authorities in whose districts the area of supply is situate.
2. A list of the local authorities, companies, or persons (if any) authorised to supply electricity under statutory powers within the area of supply.
3. A list of the streets not repairable by a local authority and of the railways and tramways (if any) which the applicants propose to take powers to break up.
4. A list of the canals and navigable rivers (if any) within the proposed area of supply.
5. A statement of the capital proposed to be expended and employed in connection with the undertaking, and the mode in which such capital is to be provided, or in the case of an application by a local authority a statement of the sums proposed to be expended.
6. If the applicants are a company incorporated under the provisions of the Companies' Acts, a copy of the memorandum and articles of association.
7. A fee of 50*l.* by cheque payable to an "Assistant Secretary of the Board of Trade" to cover ordinary expenses. If in consequence of inquiries or otherwise additional expense is incurred, the amount will be charged to the applicants, and must be paid by them in addition to the ordinary fee.

Applications under section 13 of Electric Lighting Act, 1882.

Rule XII. Where the undertakers under any license, order, or special Act desire the written consent of the Board of Trade under section 13 of the Electric Lighting Act, 1882, to enable them to break up any street not repairable by a local authority or any railway or tramway which they are not empowered to break up under such license, order, or special Act, application for such consent must be made by memorial, and the memorial must specially request such consent and must describe accurately the street, railway, or tramway which they propose to acquire power to break up.

Procedure.

Rule XIII. Applicants for a license or provisional order must proceed as follows, subject in the case of a license to the application having been previously entertained by the Board of Trade, *vide* Rule 1 :—

They must publish notice by advertisement of their application, or in the case of a provisional order, of their intended application, and every such advertisement must contain the following particulars :—

1. The object of the application.
2. The address and description of the applicants.
3. A description of the proposed area of supply.

Appendix.

4. The names of the streets in which it is proposed that electric lines should be laid down within a specified time.

5. A list of the streets not repairable by a local authority, and of the railways and tramways (if any) which the applicants propose to take powers by the license or orders to break up.

6. The address of an office in London, and another office within the proposed area of supply, at which printed copies of the draft license or order when applied for, and of the license or order when made, can be obtained at a price of not more than one shilling each.

The advertisement must be headed with a short title, descriptive of the undertaking (corresponding with that at the head of the memorial), and it must state that every local or other public authority, company, or person desirous of bringing before the Board of Trade any objection respecting the application must do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it "Electric Lighting Acts," in the case of a provisional order, on or before the 15th January next ensuing, and in the case of a license within two months from the date of the newspaper containing the first advertisement, and that a copy of such objection must also be forwarded to the parliamentary agents or solicitors for the license or order.

The advertisement must be inserted once at least in each of two successive weeks in one and the same newspaper, published and circulating in the proposed area of supply, or in such other newspaper as the Board of Trade may direct; and once at least in the London, Edinburgh, or Dublin *Gazette*, accordingly as the proposed area of supply is situate in England, Scotland, or Ireland.

Rule XIV. If any local or other public authority, company, or person desires to bring before the Board of Trade any objection respecting an application for a license, or a provisional order, they must do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it "Electric Lighting Acts," in the case of a provisional order on or before the 15th January next ensuing, and in the case of a license within two months from the date of the newspaper containing the first advertisement of the application. A copy of the objection must also be served upon the parliamentary agents or solicitors for the license or order. If any local or other public authority, company, or person desires to have any clauses or other amendments inserted in the license or order, they must deliver the same to the Board of Trade, and also to the parliamentary agents or solicitors for the license or order, on or before the time limited for bringing objections.

Rule XV. When a license or provisional order has been granted by the Board of Trade, and delivered to the applicants, they must forthwith deposit printed copies for public inspection in the offices specified in Rule X., and must supply copies to all persons applying for the same, at a price of not more than one shilling each, and must further publish the same as the Board of Trade may direct.

Rule XVI. Where in a license or provisional order granted by the Board of Trade a deposited map is referred to, the promoters must, within one month from the grant of the license or order, deposit at the Board of Trade a published map on a scale of not less than six inches to a mile, or if there is no published map then the best map procurable, showing the area of supply coloured to correspond with the description in the license or order. The map must be mounted on linen, and must be certified as correct as regards their respective districts by the clerk or surveyor to every local authority having jurisdiction within the area of supply.

Special Provisions as to Provisional Orders.

Rule XVII. In the case of provisional orders the following additional regulations must be observed:—

1. The advertisements must be inserted in October or November.
2. A copy of the advertisement must be deposited on or before the 30th November at the Board of Trade and at the offices specified in Rule X.
3. The memorial must be lodged on or before 21st December.
4. The parliamentary agents or solicitors for the order must be prepared to prove compliance with the provisions of the Acts and these rules by the 15th January, and all such proofs must be completed on or before the 22nd February. Six days' notice will be given of the day and hour at which such agents or solicitors are to attend for the purpose at the Board of Trade, and printed forms of proof will accompany the notice. These forms must be filled up and brought with the requisite documents to the Board of Trade at the time fixed for receiving proof.

The Board of Trade, August, 1890.

HENRY G. CALCRAFT, *Secretary*.

NOTE.—When applications for provisional orders, authorising the supply of electricity within the district of any local authority are received by the Board of

Trade from such local authority, and also from any other authority, company, or person, the Board of Trade will give a preference to the application of the local authority of the district in every case where, in the opinion of the Board of Trade, no special circumstances exist which render such a preference inexpedient.

In cases of applications for a license, renewal of license, or provisional order, to which objection is made by any person locally interested, the Board of Trade will, if they consider it expedient, hold a local inquiry, of which due notice will be given.

Appendix.

THE PUBLIC WORKS LOANS ACT, 1882.

(45 & 46 VICT. CAP. 62.)(a)

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission ; and for other purposes relating to Loans by those Commissioners.

[18th August, 1882.]

I. This Act may be cited as the Public Works Loans Act, 1882.

Short title.

II. This Act may be cited, together with the Public Works Loans Act, 1875, and the Public Works Loans Act, 1879,(b) as the Public Works Loans Acts, 1879 to 1882.

Citation of Acts
38 & 39 Vict.
c. 89,
42 & 43 Vict.
c. 77.

PART I.

[Relates to the grant of Money for Public Works Loan Commissioners during the period ending June 30th, 1883.]

PART II.

[Relates to the grant of Money for Public Works Commissioners, Ireland.]

PART III.

[Relates to the grant of Money for Irish Land Commission.]

PART IV.

Amendment of Acts.

VII. Whereas under the General Pier and Harbour Act, 1861, the Board of Trade can make a provisional order, subject to confirmation by Parliament, authorising the construction of a harbour, pier, or other works within the meaning of the said Act, and authorising the promoters to raise a loan to the amount specified in the order for the purpose of such harbour, pier, or works, and in many cases where the promoters are a public body difficulties arise in raising such loan on account of the defective security, while the construction of the said harbour, pier, or works is of so great importance to the inhabitants of the town or place where the same are to be constructed that they would be willing to guarantee the loan, if power were given for this purpose, and it is expedient to provide for the conferring of such power by the provisional order: Be it therefore enacted as follows:

Amendment of 24 & 25 Vict. c. 45, as to provision for loans in provisional order respecting harbours.

- (1.) Where a provisional order under the General Pier and Harbour Act, 1861, authorises any public body to raise a loan for the construction of any works as defined by that Act in any place, the same or any other order may authorise any rating authority as hereinafter defined in that place, under the circumstances and subject to the conditions specified in the order, to charge, if they think it expedient for the inhabitants at large of such place, any fund or rate under their control, for the purpose of aiding the public body in raising the said loan, or any part thereof, from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order.
- (2.) The order shall provide that the resolution of the rating authority to give the guarantee shall be a special resolution, that is to say, a resolution passed at one meeting of such authority and published in manner directed by the order, so as to give notice to all persons interested, and confirmed at a second meeting of the rating authority held not less than fourteen days after the first of such public notices has been given, and not less than three months after the meeting at which the resolution was passed.
- (3.) The order shall provide for the time within which and the mode in which any money borrowed by the rating authority is to be repaid, and for the

(a) See 38 & 39 Vict. c. 89, *ante*, p. 1028.(b) *Ante*, p. 1109.

Appendix.

effectual recovery out of the said fund or rate of any sum payable under the guarantee, and of the principal and interest of any money borrowed by the said authority, and for the reimbursement of the fund or rate out of the income of the said works, or otherwise, by the said public body, and shall contain such incidental provisions as seem necessary or proper for carrying this section into effect.

- (4.) The promoters of an order proposing to confer power under this section on any rating authority shall, a reasonable time before they apply to the Board of Trade to settle the order, submit to the Local Government Board a statement of such proposal, and if the Local Government Board declare that in their opinion, having regard to the financial condition of the rating authority, or to the necessity for such rating authority to provide a water supply or drainage for the inhabitants of the said place, or otherwise to fulfil the original duties of such authority, it is inexpedient to burden such rating authority with any such charge as is mentioned in such proposal, the Board of Trade in settling the order shall omit any provision conferring power on the rating authority under this section. (a)

In this section,—

The expression “public body” means any rating authority, also any commissioners or trustees, or other body or person who manage or undertake the works without any view to the payment of any dividend or profits out of the revenue from such works :

The expression “rating authority” means—

- (1.) As regards England, any authority being an urban sanitary authority under the Public Health Act, 1875, (b) and the Acts amending the same ; and (c)

* * * * *

38 & 39 Vict.
c. 55.

Account in
case of loan
on security
of rate.

VIII. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made.

Repeal of
38 & 39 Vict.
c. 89, s. 13, and
40 & 41 Vict.
c. 27, s. 11,
as to annual
and quarterly
statements of
amounts
required by
borrowers.

IX. Section thirteen of the Public Works Loans Act, 1875, and section eleven of the Public Works Loans (Ireland) Act, 1877 (which provided for annual and quarterly statements from borrowers of the amounts which they will probably apply to borrow), are hereby repealed.

X. (d)

THE LANDS CLAUSES (UMPIRE) ACT, 1883.

(46 VICT. CAP. 15.)

An Act to amend the Lands Clauses Consolidation Act, 1845. [18th June, 1883.]

* * * * *

Amendment of
section 28 of
8 Vict. c. 18,
extending the
power of
appointment
of umpire by
Board of Trade.

I. The following words in section twenty-eight of the Lands Clauses Consolidation Act, 1845, (e) are hereby repealed, that is to say, “in any case in which a railway company shall be one party to the arbitration, and two justices in any other case,” and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this Act, apply as if such words were omitted, and the same section shall accordingly be read and have effect as follows :—

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire

(a) Words relating to Scotland only are omitted from this sub-section.

(b) See section 6 of that Act, *ante*, p. 24.

(c) This definition is extended by 50 & 51 Vict. c. 37, s. 4, *post*, to rural sanitary authorities, quarter sessions, and county councils. The remainder of this section relates to Scotland and Ireland only, and is, therefore, omitted.

(d) Relates to Ireland only; and section 11 makes provision with regard to certain local loans.

(e) See this section, *ante*, p. 814.

on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final. **Appendix.**

II. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

Short title.

THE PUBLIC WORKS LOANS ACT, 1883.

(46 & 47 VICT. CAP. 42.)*(f)*

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and to amend the Acts relating to the said Commissioners and for other purposes. [25th August, 1883.]

I. This Act may be cited as the Public Works Loans Act, 1883.

Short title.

II. The Public Works Loans Act, 1875, the Public Works Loans (Money) Act, 1876, the Public Works Loans Act, 1879, the Public Works Loans Act, 1881, and the Public Works Loans Act, 1882, may be together cited as the Public Works Loans Act, 1875 to 1882.*(g)*

Citation of Acts.
38 & 39 Vict.
c. 89.
39 & 40 Vict.
c. 31.
42 & 43 Vict.
c. 77.
44 & 45 Vict.
c. 38.
45 & 46 Vict.
c. 62.

PART I.

Grant of Money for Public Works Loan Commissioners.

III. (1.) For the purpose of loans by the Public Works Loan Commissioners,—

(a.) Any sum or sums, not exceeding in the whole the sum of three million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1879; and

Grant of
3,000,000*l.* for
Public Works
Loans.

(b.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund; and such sums may be issued and advanced during the period ending on the day at which a further Act granting money for the purpose of the said loans comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART II.

[*Relates only to the grant of Money for the Public Works Commissioners, Ireland.*]

PART III.

[*Relates to the grant of Money for the Irish Land Commission.*]

PART IV.

[*Makes Provision as to certain Loans, and its application is therefore local only. Sections 11—13 relate to Ireland only.*]

THE FACTORY AND WORKSHOP ACT, 1883.

(46 & 47 VICT. CAP. 53.)*(h)*

An Act to amend the Law relating to Factories and Workshops.

[25th August, 1883.]

I. This Act may be cited as the Factory and Workshop Act, 1883.

Short title.

*White Lead Factories.**(i)*

(f) See 38 & 39 Vict. c. 89, *ante*, p. 1028. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(g) These Acts are all included in the Appendix. (See note *(a)* on p. 1028.)

(h) See 41 & 42 Vict. c. 16, *ante*, p. 1080, and 54 & 55 Vict. c. 75, and 58 & 59 Vict. c. 37, *post*. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(i) Sections 2—12 inclusive, relating to white lead factories, did not relate in any way to the powers or duties of local authorities, such factories being, so far as these sections are concerned, under the control of the factory inspectors only; and sections 7—12 inclusive are

Appendix.

*Bakehouses. (a)*Regulations for
new bakehouses.

XV. It shall not be lawful to let or suffer to be occupied as a bakehouse, or to occupy as a bakehouse, any room or place [*which was not so let or occupied before the first day of June, one thousand eight hundred and eighty-three*], (b) unless the following regulations are complied with :

- (i.) No watercloset, earthcloset, privy, or ashpit shall be within or communicate directly with the bakehouse ;
- (ii.) Any cistern for supplying water to the bakehouse shall be separate and distinct from any cistern for supplying water to a watercloset ;
- (iii.) No drain or pipe for carrying off fæcal or sewage matter shall have an opening within the bakehouse.

Any person who lets or suffers to be occupied or who occupies any room or place as a bakehouse in contravention of this section shall be liable, on summary conviction, to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for
bakehouse
being unfit on
sanitary
grounds for
use as a
bakehouse.

XVI. Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a local authority that any room or place used as a bakehouse (whether the same was or was not so used before the passing of this Act) is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse the occupier of the bakehouse shall be liable, on summary conviction, to a fine not exceeding forty shillings, and on a second or any subsequent conviction, not exceeding five pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

Enforcement
of law as to
retail bake-
houses by local
authorities.

XVII. (1.) As respects every retail bakehouse, the provisions of this part of this Act, and of sections three, thirty-three, thirty-four, and thirty-five of the Factory and Workshop Act, 1878, (c) (which relate to cleanliness, ventilation, overcrowding, and other sanitary conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878 ; and for the purposes of this section the medical officer of health of the local authority shall have and exercise all such powers of entry, inspection, taking legal proceedings and otherwise, as an inspector under the Factory and Workshop Act, 1878, (d)

Construction of
Act and defini-
tions.
41 & 42 Vict.
c. 16.

XVIII. This Act shall be construed as one with the Factory and Workshop Act, 1878 ; and in this Act, unless the context otherwise requires,—

The expression "white lead factory" includes every factory and workshop in which the manufacture of white lead is carried on :

The expression "retail bakehouse" means any bakehouse or place, the bread, biscuits, or confectionery baked in which are not sold wholesale but by retail in some shop or place occupied together with such bakehouse : (e)

The expression "local authority" means, as respects the city of London and the liberties thereof, the Commissioners of Sewers ; as respects the parishes and districts mentioned in the Schedules A. and B. annexed to the Metropolitan Management Act, 1855, and any parish to which the said Act may be extended by Order in Council in manner in the said Act provided, the vestries and district boards elected under the said Act ; and as respects any urban sanitary district, the urban sanitary authority, and as respects any rural sanitary district, the rural sanitary authority, within the meaning of the Public Health Act, 1875.

* * * * *

now repealed by 54 & 55 Vict. c. 75, *post*. Sections 13 and 14 contain amendments of the Factory Act, 1878, but are not material to the present work.

(a) See notes on bakehouses, *ante*, pp. 21, 29.

(b) These words bracketed in italics were repealed by 58 & 59 Vict. c. 37, s. 27 (2), *post*, as from the 1st January, 1896 ; *ib.*, s. 55, *post*.

(c) See that Act, *ante*, p. 1080.

(d) Sub-sections (2) and (3) of this section were repealed by 54 & 55 Vict. c. 75, *post*, Sub-section (2) is re-enacted as to workshops generally by section 2 of the last mentioned Act.

(e) It is provided by 54 & 55 Vict. c. 75, s. 36, that the expression "retail bakehouse" in the above section shall not include any place which is a factory within the meaning of the principal Act, 41 & 42 Vict. c. 16.

18 & 19 Vict.
c. 120.

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

Appendix.

(47 & 48 VICT. CAP. 70.) (f)

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. [14th August, 1884.]

I. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Short title. Act, 1884.

Corrupt Practices.

II. (1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation. (g) Definition and punishment of corrupt practice at municipal election.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election. (h)

III. (1.) Where upon the trial of an election petition (i) respecting a municipal Incapacity of candidate

(f) This statute applies to elections of urban district councillors for districts not being municipal boroughs and of rural district councillors under section 48 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), *ante*, p. 745. It is, therefore, set out here. The notes, of course, have reference only to the application of the Acts to elections of sanitary bodies, such as councillors for urban districts not being boroughs, and of rural district councils.

(g) This provision takes the place of a repealed clause in section 77 of the Municipal Corporations Act, 1882. The offence of aiding, &c., the commission of the offence of personation is new.

(h) By the Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51), s. 6, corrupt practices other than personation, or aiding, &c., in the commission of personation, are declared to be misdemeanours, and any person convicted of any of them is liable to be imprisoned, with or without hard labour, for a term not exceeding two years, or to be fined any sum not exceeding 200*l*. A person who commits the offence of personation or of aiding, &c., the commission of that offence, is guilty of felony, and liable on conviction to be imprisoned, with or without hard labour, for a period not exceeding two years. In addition to these punishments, a person who is convicted on indictment of any corrupt practices shall not be capable for a period of seven years from the date of his conviction (a) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office (see *infra*); or (b) of holding any public or judicial office (see *infra*), and if he holds any such office the office shall be vacated. Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction. By section 64, the expression "public office" means any office under the Crown or under the charter of a city or a municipal borough, or under the Acts relating to municipal corporations, or to the poor law or under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), or under the Public Health Act, 1875 (38 & 39 Vict. c. 55), or under any Acts amending the above-mentioned Acts, or under any other acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office to which a person is elected and appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly. The expression "judicial office" includes the office of justice of the peace and revising barrister.

As to the form of indictment for corrupt practices, see *Reg. v. Stroulger*, 17 Q. B. D. 327; 55 L. J. M. C. 137; 55 L. T. (N.S.) 122; 34 W. R. 719; *Reg. v. Norton*, 16 Cox C. C. 59.

Each act of bribery is a distinct offence for which separate penalties are incurred. *Milnes v. Bale*, L. R. 10 C. P. 327; 44 L. J. C. P. 336; 33 L. T. (N.S.) 174; 23 W. R. 660; 39 J. P. 743.

(i) As to election petitions in respect of corrupt practices, see the Municipal Corporations Act, 1882, s. 87, *ante*; and in respect of illegal practices, see section 25 of this Act, *post*. For the application of these sections to elections of urban district councillors for districts not being boroughs and rural district councillors, see section 36 *post*.

Appendix.

reported guilty
of corrupt
practice.
45 & 46 Vict.
c. 50.

election(*a*) for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, (*b*) that any corrupt practice other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office(*c*) in the said borough, and if he has been elected his election shall be void : and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice, (*d*)

(2.) Upon the trial of an election petition(*e*) respecting a municipal election(*a*) for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office(*c*) in the said borough during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Illegal Practices.

Certain expen-
diture to be
illegal practice.

IV. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(*a*.) On account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares or otherwise ; or

(*b*.) To an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice ; or

(*c*.) On account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, (*f*) and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, (*a*) the person making such payment or contract shall be guilty of an illegal practice, and any person(*g*) receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section. (*h*)

V. [*Expense in excess of maximum to be illegal practice.*](*i*)

(*a*) This includes for the purposes of this Work, the election of urban district councillors for districts not being boroughs and rural district councillors. See section 36, *post*.

(*b*) *Ante*, p. 1137.

(*c*) This means an office mentioned in Schedule 1. See section 36, *post*.

(*d*) These incapacities are set forth in note (*h*), *ante*, p. 1177.

A single act of bribery will render an election void. *Norwich*, 54 L. T. (N.S.) 625 ; 4 O'M. & H. 84.

(*e*) See note (*i*), *ante*, p. 1177.

(*f*) In applying this clause to elections of urban district councillors for districts not being boroughs, the word *borough* or *ward* must be read to mean *urban district* or *ward of such district*, or *parish or united parishes in the case of elections of rural district councillors*. Section 36 (*a*), *post*.

(*g*) The word *person* here is presumed to mean elector in cases falling within clause (*b*), as it does not appear to be illegal to make payments such as those mentioned in that clause to any person other than an elector.

(*h*) This proviso qualifies the provisions of clause (*b*).

(*i*) This section cannot apply to elections of urban district councillors for districts not being boroughs or of rural district councillors. See section 37, *post*.

VI. (1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.^(k)

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.^(l)

VII. A person guilty of an illegal practice in reference to a municipal election shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office^(m) within the meaning of this Act) held for or within the borough⁽ⁿ⁾ in which the illegal practice has been committed.

VIII. (1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882,^(o) and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough⁽ⁿ⁾ in which a charge is made of an illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office^(p) in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void ; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.^(q)

Illegal Payment, Employment, and Hiring.

IX. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act [or for any expenses incurred in excess of any maximum amount allowed by this Act],^(r) or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception,^(s) such person shall be guilty of illegal payment.^(t)

X. (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out

(k) As to the persons prohibited from voting by this Act, see sections 7, 8, 13, 18, 22, 23, and Schedule III., Part II., *post*. As to persons prohibited from voting by reason of the receipt of relief, see *ante*. A convicted felon is disqualified to vote at any election until he has undergone his punishment or been pardoned. 33 & 34 Vict. c. 23, s. 1.

(l) But *quare*, if the illegal practice has been committed by his agents? It would appear from section 8, sub-section (2), *post*, that the election would be avoided in that event.

(m) As to what is a public office, see note (k), *ante*, p. 1177.

(n) See note (f), *ante*, p. 1178.

(o) This part of the Municipal Corporations Act, 1882, is set out, *ante*, p. 1133.

(p) See note (h), *ante*, p. 1177.

(q) These incapacities are stated in section 7, *ante*.

(r) The provisions of this Act as to maximum expenses do not apply to elections of urban district councillors for districts not being boroughs, or of rural district councillors. See section 37, *post*.

(s) See sections 19, 20, *post*.

(t) Employment for payment of persons to keep order at meetings is an illegal employment. *Packard v. Collings*, 54 L. T. (N.S.) 619. Gratuitous refreshments to workers render their employment illegal within this section. *Barrow Election Petition*, 54 L. T. (N.S.) 618.

Appendix.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

Punishment on conviction of illegal practice.

Incapacity of candidate reported guilty of illegal practice. 45 & 46 Vict. c. 50.

Providing of money for illegal practice or payment to be illegal payment.

Employment of hackney carriages, or

Appendix.

of carriages and
horses kept for
hire.

for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt with-
drawal from a
candidature.

XI. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, (a) in consideration of any payment or promise of payment, (b) shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement, shall also be guilty of illegal payment.

Certain ex-
penditure to
be illegal
payment.

XII. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction. (c)

(2.) Subject to such exception as may be allowed in pursuance of this Act, (d) if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law. (e)

Certain employ-
ment to be
illegal.

XIII. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, (f) except as follows (that is to say,)

(a.) A number of persons may be employed, not exceeding two for a borough or ward, (g) and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(b.) One polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bond fide* made with any person in the ordinary course of business. (h)

* * * * *

(a) See note (a) to section 3, *ante*, p. 1178.

(b) Note that the consideration must be payment or promise of payment. Withdrawal for other considerations is not within this section. By section 34, *post*, and section 64 of the Corrupt and Illegal Practices Prevention Act, 1883, therein referred to, the expression "payment" includes any pecuniary or other reward, and the expressions "pecuniary reward" and "money" include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money must be construed accordingly.

(c) Cards to be worn in voters' hats bearing a likeness of the candidate, and an invitation to vote for him, are marks of distinction within the meaning of this section. *Walsall*, 4 O'M. & H. 126.

(d) See sections 19, 20, *post*.

(e) Note that ignorance of the law will not be an excuse for the party paying.

(f) *e.g.*, as election agent. *Ex parte Walker*, 22 Q. B. D. 384; 58 L. J. Q. B. 190; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260.

(g) See note (f) to section 4, *ante*, p. 1178.

(h) This appears to be intended to meet the case of a person who contracts for the purposes of the election, *e.g.*, for printing. The employés of such persons are not to be deemed to be employed within the meaning of this section.

(2.) Subject to such exception as may be allowed in pursuance of this Act, ^(d) if **Appendix.** any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act. ⁽ⁱ⁾

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

XIV. Every bill, placard, or poster having reference to a municipal election ^(k) shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds. ^(l)

Name and address of printer on placards.

XV. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act. ^(m)

Saving for creditors.

XVI. (1.) ^(a) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any

Use of certain premises for committee

(i) See note (e) to section 12, *ante*, p. 1180.

(k) See note (a) to section 3, *ante*, p. 1178.

(l) The appellant was a candidate for a seat on a local board. The respondent received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by the appellant, but having no printer's name thereon. This document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him. The printer debited the appellant with the cost of printing, but was not paid. It was held on these facts that there was no evidence that the appellant had "printed or caused to be printed" the document in question. Placards or posters also without the printer's name and address printed by the instructions of one E., who was advertised in a local newspaper as chairman of a committee for promoting the election of the appellant, and who sent the copy to the printer, were proved to have been posted about the district at E.'s expense. The court doubted whether this was evidence of the printing and posting by an agent of the appellant, but the justices having convicted the appellant in one penalty for both offences, and the conviction being bad as to the first:—Held, that it was bad altogether. *Bettesworth v. Allingham*, 16 Q. B. D. 44; 34 W. R. 296; 50 J. P. 55.

In the above case the court seemed to assume that a circular containing an election address was a bill, placard, or poster within the meaning of the section. In some cases which came before the courts subsequently, it was held that such a circular was not a bill, placard, or poster. See per Lord COLERIDGE, C.J., and MANISTY, J., in the cases reported in 5 T. L. R. 160; and per FRY, L.J. and MANISTY, J., *ib.* 170. In other cases, however, the court granted relief under section 20, so that the point is still in doubt.

The name and address of the publisher must appear as well as those of the printer if they are different persons. It has not yet been expressly decided whether a candidate is liable to penalties under this section if he publishes a placard, &c., on which his name and address appears, but which does not explicitly describe him as the publisher; but in the year 1889 the High Court excused a number of candidates in respect of such omissions.

A person other than a candidate is not by this section declared to be guilty of an illegal practice, payment, employment, or hiring. He cannot, therefore, be excused under section 20. *Ex parte Lenanton*, 53 J. P. 263.

(m) Hence in the case of an expense incurred in contravention of the Act, the illegality of the expense will be no defence to an action by a creditor who, when the expense was incurred, was ignorant of its being in contravention of the Act. This provision is necessary for the protection of creditors who have no means of knowing what other expenses have been incurred by a candidate. The provisions of the Act as to maximum expenses do not, however, apply to elections of district councillors for urban districts not being boroughs or of rural district councillors. See section 37, *post*. See sections 19, 20, *post*.

Appendix. kind (whether food or drink) is ordinarily sold for consumption on the premises,^(a) or

rooms or meetings to be illegal hiring.

(b.) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Punishment of illegal payment, employment, or hiring.

XVII. (1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge or consent, such candidate shall be guilty of an illegal practice.^(b)

Avoidance of election for extensive illegal practices, &c.

XVIII. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough, it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed^(c) that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office^(d) in the said borough.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment or Hiring.

Report exonerating candidate in certain cases, of corrupt and illegal practice by agents.

XIX. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences,^(e) in reference to such election, and the election court further report that the candidate has proved to the court—

(a.) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in

(a) It should be noticed that this section applies to any premises on which refreshment is sold for consumption on the premises, or on which liquor is sold, whether for consumption on or off the premises. It applies even where the door of communication between the part used for the election and the part used for the sale of intoxicating liquors is kept locked. *Ex parte Payne*, M. C. 1894, p. 520; *The Times*, 2nd Nov. 1894. Thus a place where sandwiches are sold for consumption at the counter was in one case which came before the court in 1889 held to be within this provision; but the section does not apply to a club unless liquor is supplied in it.

(b) And punishable as provided by section 7, *ante*.

(c) Note that this section may apply, although the practices in question have been committed by persons other than the candidate or his agents; but in such a case the candidate could protect himself under sections 19 and 20, *post*.

(d) See note (c) to section 3, *ante*, p. 1178.

(e) Note that the offences of bribery, personation, and aiding and abetting in the commission of personation are not included here.

the said report were committed without the sanction or connivance of such candidate; and **Appendix.**

- (b.) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and
- (c.) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and
- (d.) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

XX. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the court sufficient—

- (a.) That any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; (f) and
- (b.) That such act or omission arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and
- (c.) That such notice of the application has been given in the said borough as to the court seems fit;

and under the circumstances it seems to the court to be just that the said candidate, agent, and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the act or omission. (g)

(f) Note that corrupt practices are not mentioned here.

(g) Relief may be given under this section by the High Court, on application for that purpose, or by an election court. As to the election court, see section 92 of the Municipal Corporations Act, 1882, *ante*, p. 1136.

From the refusal of the High Court to grant relief under this section appeal lies to the Court of Appeal. See *Ex parte Walker*, 22 Q. B. D. 384; 58 L. J. Q. B. 190; 37 W. R. 293; 53 J. P. 261. See also *Ex parte Thomas*, 60 L. T. (N.S.) 728; 5 T. L. R. 234; *Ex parte Birtwhistle*, *ib.* 321.

In order to support an application under this section, it will not be sufficient that notice of intention to make the application has been advertised in the local papers, but such notice should be published in such a manner as will ensure a reasonable certainty that persons interested had notice; and it will also be insufficient in the affidavits upon which the application is made merely to state that the Act in respect of which the relief is sought arose from inadvertence, and not from any want of good faith, without showing some reasonable excuse for such inadvertence: *Ex parte Perry*, 48 J. P. 824. In the cases which came before the court in 1889 it was laid down that "inadvertence" meant negligence or carelessness where the circumstances showed an absence of bad faith. The court also required notice to be given to the opposing candidates and to the returning officer. The court also required that notices should be posted up throughout the district, and advertised in the local papers, that application would be made for relief. Notice need not, however, be given to the Attorney-General. *Ex parte Lenanton*, 53 J. P. 263; 5 T. L. R. 173.

There have been numerous applications to the High Court for excuse under this section, especially in the beginning of the year 1889, with reference to the first elections of county councillors. These cases will be found reported in 5 T. L. R., pp. 173, 183, 195, 198, 203, 206, 220, and 272. They must not, however, be regarded as precedents, for the court granted relief almost as a matter of course where it was shown that the applicant had acted in ignorance of the law, but at the same time expressed an opinion that such an excuse would not afterwards be accepted. See the observations in *Ex parte Darlington*, 53 J. P. 71;

Appendix.

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Sending in
claims and
making pay-
ments for elec-
tion expenses.

XXI.(a) (1.) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election(b) shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice,(c) but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk(d) a return of all expenses incurred by such candidate or his agents, on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.

(4.) After the expiration of the time for making such return and declaration, the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorized excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.(e)

Ex parte Lenanton, supra. Since then see *Ex parte Payne*, The Times, 2nd Nov. 1894; M. C. 1894, p. 530.

Among the cases reported before 1889 may be mentioned the following:—*Ex parte Clark*, 52 L. T. (N.S.), 260, where placards had been issued without the printer's name; *Ex parte Terry*, where a room in a club had been used contrary to section 16; *South Shropshire Election*, 2 T. L. R. 347, where payments were made after the proper time (and see *Ipswich Election*, 3 T. L. R. 397); *Ex parte Robson*, 18 Q. B. D. 336; 55 L. T. (N.S.) 813; 35 W. R. 290; 51 J. P. 199, where a candidate was allowed to make a return and declaration under section 21 after the prescribed time; *Ex parte Matthews*, 2 T. L. R. 548, where a candidate had acted as his own agent, and had omitted to make a declaration of expenses. In the case of *Essex (South-West Division) Election*, 2 T. L. R. 388, where a person voted, and afterwards accepted payment for services rendered as an agent, the court refused to relieve him.

Where a person had obtained an excuse for a late return of expenses, and subsequently on the same day, but after the order had been drawn up, a voter appeared to oppose the application, it was held that the application of the voter must be dismissed in the absence of any sufficient explanation of the delay. *Wigan Election*, 2 T. L. R. 159.

If the application is made by a person against whom a petition is pending the court will order the application to stand over till after the trial of the petition. *Ex parte Wilks*, 15 Q. B. D. 114; 55 L. J. Q. B. 576; 34 W. R. 273; 50 J. P. 487; *Ex parte Evans*, 5 T. L. R. 207. But this course will not be followed merely because a petition is threatened. *Ex parte Stephens, ib.* 203.

(a) This section does not apply to elections of urban district councillors for districts not being boroughs or of rural district councillors. See section 37, *post*.

(b) Money paid by an agent of a candidate for the employment of persons to keep order at meetings connected with the election is within this provision. *Packard v. Collings*, 54 L. T. (N.S.) 619.

(c) And therefore punishable as provided by section 7, *ante*.

(d) This return and declaration must be made even in the case of an unopposed election, when the candidate has incurred no expenses. In such a case, however, the court granted relief under section 20, *ante*. *Ex parte Robson, supra*.

(e) Note that any person may sue. The Crown cannot remit the penalties. See *Todd v. Robinson, ante*, p. 482.

(5.) If the candidate without such authorized excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice,^(c) and if he knowingly makes the said declaration falsely, he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

Appendix.

(6.) The county court for the district in which the election was held, or the High Court, or an election court, may on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.^(f)

(7.) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorized excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration as to the court seems just.^(g)

(8.) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10.) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person^(h) on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11.) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

Disqualification of Electors.

XXII. Every person guilty of a corrupt or illegal practice or of illegal employment, payment or hiring at a municipal election⁽ⁱ⁾ is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny. Prohibition of person guilty of offences from voting.

XXIII. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part II. of the Third Schedule to this Act, shall apply as part of this Act. Application of ss. 37 and 38 of 46 & 47 Vict. c. 51.

XXIV. (1.) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though List in burghs roll of persons incapacitated

^(f) Notice of application to the court must probably be given to the other candidates, to the returning officer, and to the public by advertisements. *Re Ludlow Election*, 54 L. T. (N.S.) 129; 34 W. R. 352. An application for leave to pay the hire of a brougham used without authority by the clerk of a candidate was refused in *Re Chelsea Election*, 2 T. L. R. 374.

^(g) The illness of an agent was accepted as an excuse in *Re Ipswich Election*, 3 T. L. R. 397.

^(h) Any person, not any person interested.

⁽ⁱ⁾ See note (a) to section 3, *ante*, p. 1178.

Appendix.

for voting by
corrupt or
illegal practices.

otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relative to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which such borough is situate.

(3.) The town clerk of any municipal borough shall not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5.) The revising authority shall determine such claims and objections and shall revise such lists in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6.) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned.

45 & 46 Vict.
c. 59.

Proceedings on Election Petitions.

Petition for
illegal practice.

XXV. (1.) A municipal election petition complaining of the election on the ground of an illegal practice^(a) may be presented at any time before the expiration

(a) A petition may be presented for a corrupt practice under the Municipal Corporations Act, 1882, s. 87, *ante*, p. 1134.

of fourteen days after the day on which the town clerk^(b) receives the return and declaration respecting election expenses by the candidate to whose election the petition relates,^(c) or where there is an authorized excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse.^(d) **Appendix.**

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried. Time for presentation of petition alleging illegal practices.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.^(e) 45 & 46 Vict. c. 50.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

XXVI.^(f) (1.) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do. Withdrawal of election petition.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions^(g) a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General) in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the

(b) That is the clerk to the urban district council for a district not being a borough, or the clerk to the rural district council. Section 36, *post*.

(c) See section 21, sub-section (3), *ante*.

(d) See section 21, sub-section (9), *ante*.

(e) A judge who is not on the rota for the trial of parliamentary election petitions cannot make an order giving leave to amend under this section. Such an order ought not to be made *ex parte*. *Shaw v. Reckitt* [1893], 1 Q. B. 779; 68 L. T. (N.S.) 688; 41 W. R. 497. That question being a question of law no appeal lies to the Court of Appeal from a decision of a Divisional Court thereon without leave of the Divisional Court. *Shaw v. Reckitt* [1893], 2 Q. B. 59; 62 L. J. Q. B. 375; 69 L. T. 327; 41 W. R. 497; 57 J. P. 805; 4 R. 425.

(f) See also the Municipal Corporations Act, 1882, s. 95, *ante*, p. 1139.

(g) The Solicitor of the Treasury is now Director of Public Prosecutions. 47 & 48 Vict. c. 58.

Appendix. Director of Public Prosecutions or his assistant, or other representative, may consider material.

45 & 46 Vict.
c. 50.

(6.) Where in the opinion of the court the proposed withdrawal of a petition is the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration.(a)

(7.) In every case of the withdrawal of an election petition, by leave of the election court, such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Continuation
of trial of
election petition.

XXVII. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

Attendance of
Director of
Public Prosecutions on trial
of election
petition, and
prosecution by
him of offenders.

XXVIII. (1.) On every trial of a municipal election petition the Director of Public Prosecutions(b) shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity(c) and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, if

(a) See this section, *ante*, p. 1139.

(b) The Solicitor to the Treasury is now Director of Public Prosecutions. 47 & 48 Vict. c. 58.

(c) See 45 & 46 Vict. c. 50, s. 92, *ante*, p. 1136.

of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; (d) and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

- (a.) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and
- (b.) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and
- (c.) If the accused person is not present before the court, the court shall, as circumstances require, issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882. 45 & 46 Vict. c. 50.

(8.) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years' standing, one of whom shall when required act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant, or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order 45 & 46 Vict. c. 50.

(d) The evidence which is to satisfy the court before it makes the order means the evidence given during the trial of the petition, and, therefore, a commissioner for the trial of municipal election petitions acted within his jurisdiction in ordering the prosecution of a person to whom he had refused a certificate of indemnity, and who did not appear, without re-hearing the evidence affecting him, and also acted within his jurisdiction in issuing a summons under sub-section (6), *post*, for his attendance before a court of summary jurisdiction for the purpose of being formally committed for trial. *Reg. v. Shellard*, 23 Q. B. D. 273; 58 L. J. M. C. 142; 61 L. T. (N.S.) 120; 37 W. R. 706; 53 J. P. 821. The commissioner for the trial of municipal election petitions ordered certain persons, prosecuted before him for a corrupt practice committed at a municipal election in Nottingham, to be prosecuted on indictment for the offence at the ensuing assizes at Derby. It was held that the commissioner had jurisdiction to order the trial at Derby; that his order was sufficient without describing the corrupt practice; that the Derbyshire grand jury could find, and the judge of assize had jurisdiction to try, the indictment; that "Derbyshire, to wit," in the margin of the indictment was sufficient, although the body of it disclosed offences in Nottingham only; that the words, "a corrupt practice," in the commissioner's order, were reasonably interpreted "some corrupt practice," and that the prosecution were not precluded from preferring a number of charges of bribery in the indictment. *Reg. v. Ripley*; *Reg. v. Campion*, 59 L. J. M. C. 122; 63 L. T. (N.S.) 119; 55 J. P. 21.

Appendix. all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct (*a*).

Power to election court to order payment by borough or individual of costs of election petition.

XXIX. (1.) Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows:

- (*a*.) If it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough; (*b*) and
- (*b*.) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witness to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, (*c*) and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct. (*c*)

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petitions and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client.

45 & 46 Vict.
c. 50.

Miscellaneous.

General provisions as to prosecution of offences under this Act.

XXX. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any capacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of Public Prosecutions (*d*) in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions:

46 & 47 Vict.
c. 51.

(*a*.) Where the Director of Public Prosecutions (*d*) considers that the circumstances

(*a*) If a petition is utterly unfounded the petitioner may be ordered to pay the costs of the Director of Public Prosecutions. *Kennington Election Petition*, 54 L. T. (N.S.) 628. This section applies only to the trial of a petition. The costs of the Public Prosecutor cannot be ordered where the petition is withdrawn. *Pascoe v. Puleston*; *Devonport Election Petition*, 54 L. T. (N.S.) 733; 50 J. P. 135.

(*b*) *i.e.*, by the urban district council for a district not being a borough, or by the rural district council (section 36).

(*c*) As to the recovery of these costs, see section 32, *post*.

(*d*) That is, the Solicitor of the Treasury. 47 & 48 Vict. c. 58.

of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough,^(e) he may by himself, or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

Appendix.

(b.) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections;^(f) and 45 & 46 Vict. c. 50.

(c.) The giving or refusing to give a certificate of indemnity to a witness by the election court shall be final and conclusive. Section 94 (7).

XXXI. If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office,^(g) and such person at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date. Person incapacitated by conviction on report to vacate seat or office.

XXXII. (1.) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate.^(h) Payment and recovery of costs.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

XXXIII. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough,⁽ⁱ⁾ whether for the purpose of causing him to appear, before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office. Service of notices.

XXXIV. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election. Definitions. 45 & 46 Vict. c. 50. 46 & 47 Vict. c. 51.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.

XXXV. [*Application to City of London of Act and of Part IV. of 45 & 46 Vict. c. 50.*]

(e) See section 36, *post*.

(f) That is by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can be made. 46 & 47 Vict. c. 51, s. 56.

(g) See *ante*, p. 1177, section 2, note (h).

(h) *i.e.*, out of the general district rate or other rate out of which the expenses of the urban district council for a district not being a borough, or of the rural district council are payable (section 36, *post*).

(i) See section 4, note (f), *ante*, p. 1178.

Appendix.

Application of Act to other Elections.

Application of
this Act and
Part IV. of
45 & 46 Vict.
c. 50, to other
elections.

XXXVI. (1.) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882,^(a) as amended by this Act, shall extend to the elections for offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election:—

- (a.) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.
 - (b.) The expression “corporate office” in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union,^(b) and a “municipal election” shall mean an election to such office, and the expressions “municipal election court,” “municipal election list,” and “municipal petition” shall be construed accordingly.
 - (c.) No corrupt or illegal practices list shall be made for any such election.
 - (d.) Vacancies created by the decision of an election court shall be filled by a new election.^(c)
 - (e.) A petition relating to the election of a guardian of a union may be tried at any place within the union.^(d)
 - (f.) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district^(e) or in the metropolis.^(f)
- * * * * *
- (h.) The Local Government Board shall have the same power as heretofore under section eight of the Poor Law Amendment Act, 1842, to determine any question arising as to the right of a person to act as guardian, except that the Board shall not have power—
 - (a.) To determine, until after the expiration of twenty-one days after the election of a person as guardian, any question which can be determined upon an election petition under this section; nor
 - (b.) To determine any question which is raised by an election petition under this section, and is either awaiting decision or has been decided by an election court; nor
 - (c.) To determine any question of general corruption, or of any corrupt or illegal practice, except so far as appears to such Board necessary for determining the validity of any vote.

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part IV. of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

(a) This part is set out *ante*, p. 1133.

(b) Hence, if a guardian elected for a parish were incapacitated under section 3, sub-sect. (2), by reason of the corrupt practices of his agents, he could not during three years be elected for any parish in the union.

(c) Hence a casual vacancy will not happen.

(d) Otherwise it would have to be tried in the parish unless an order was made under the Municipal Corporations Act, 1882, s. 93, sub-sect. (2).

(e) See the Public Health Act, 1875, s. 6, *ante*, p. 24.

(f) As the polls at elections of district councils are no longer taken by means of voting papers, clause (g) is no longer applicable to them. Clause (h) is expressly repealed by the Local Government Act, 1894, 56 & 57 Vict. c. 73.

XXXVII. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act.^(g)

Appendix.

Exemption from provisions as to maximum expenses.

Repeal.

XXXVIII. The Acts specified in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, but such repeal shall not affect anything duly done or suffered, or any right acquired or accrued, or any incapacity incurred, before the commencement of this Act; and any person subject to any incapacity under any enactment hereby repealed, or under any enactment for which such repealed enactment was substituted, shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

Repeal of Acts.

XXXIX. This Act shall come into operation on the first day of October, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Commencement of Act.

Extent of Act.

XL. This Act shall not extend to Scotland or Ireland.

Act not to extend to Scotland or Ireland.

XLI. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer.^(h)

Duration of Act.

SCHEDULES.

FIRST SCHEDULE.

ELECTIONS to which this Act extends.

In England.

Office.	Area.	Officer.	Rate.
Member of local board, as defined by the Public Health Act, 1875.	Local Government district or ward of such district.	Clerk to the local board or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement Commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the metropolis.	Returning officer of school board.	The school fund.

^(g) By sect. 48 (3) of the Local Government Act, 1894, *ante*, p. 745, this section shall apply to every election regulated by rules framed under that Act as if the election were an election mentioned in the First Schedule to this Act. The result is that this exemption from provisions as to maximum expenses, &c., applies to elections of rural district councillors and of urban district councillors for districts not being boroughs.

^(h) See Expiring Laws Continuance Acts up to the present date.

Appendix

SECOND SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As to England.

33 & 34 Vict. c. 75 -	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50 -	The Municipal Corporations Act, 1882.	Section seventy-seven from "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election." Section seventy-eight. Section seventy-nine. Section eighty. Section eighty-two. Section eighty-three. Section eighty-four. Section ninety-two, sub-section four, from "and those judges" down to the end of the sub-section. Section ninety-four, sub-sections five, six, seven, and eight. So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

THIRD SCHEDULE.

PART I.

Enactments defining Corrupt Practice.—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), ss. 2, 3.

Bribery defined. II. The following persons shall be guilty of bribery, and shall be punishable accordingly:—(a)

(1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer,

(a) It is beyond the scope of the present work to enter into a detailed discussion of the law relating to bribery and other corrupt practices. For information on this subject the reader is referred to works on the law of elections. One or two recent decisions may, however, be mentioned.

As to corrupt employment, see *Harding v. Stokes*, 1 M. & W. 354; 2 M. & W. 233; giving money after election, *Reg. v. Thwaites*, 1 E. & B. 704; 22 L. J. Q. B. 238.

Y. canvassed M., a voter at a municipal election, for his party, and on M. expressing an intention not to vote, told M. he would be remunerated for loss of time. It was held that this was bribery. *Simpson v. Yeend*, 33 J. P. 677; L. R. 4 Q. B. 626; 38 L. J. Q. B. 313.

"In order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done corruptly; that it was done thereby to influence their votes, which in my judgment means to induce them to vote for the person on whose behalf the payment was made." Per MARTIN, B., *Cheltenham Election*, 1 O'M. & H. 63. In order to make a third party responsible for the payment of a rate, it

promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

Appendix.
—

- (2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.
- (3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
- (4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
- (5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses *bonâ fide* incurred at or concerning any election.

III. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

Bribery further defined.

- (1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.
- (2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 49.

XLIX.—Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be

Corrupt payment of rates to be punishable as bribery.

must be proved that he gave authority to the person to do the act. The common law rules of agency, therefore, and not those of election law, apply to this case. *Wigan Election*, 1 O'M. & H. 190; *Ward's Practice at Elections*, p. 158.

A single case of bribery avoids an election. *Norwich Election Petition*, 54 L. T. (N.S.) 625.

To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery. *Packard v. Collings*, 54 L. T. (N.S.) 619.

Appendix. punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.(a)

Enactment defining the Offence of Personation.

The Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24.

Personation defined.

XXIV. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.(b).

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 1, 2.

What is treating.

I. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly, gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating;(c)

What is undue influence.

II. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector, either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

(a) See the preceding note.

(b) H. obtained a voting paper signed by B., who was entitled to vote in an election of councillors, and gave it to F., requesting F. to go with it to the poll and vote for two candidates, and stating that F. would run no risk in doing so. F. went and handed in the paper, but on being questioned admitted that he was not B., and the vote was not received. It was held that H. was properly convicted under 22 Vict. c. 35, s. 9, of inducing F. to personate a voter. It was held further, that it was sufficient for the conviction to state that H. induced F. to personate B., and that it need not set out the details of the process by which F. carried out the personation. *Hague v. Brown*, 22 J. P. 231; 33 L. J. M. C. 81; 9 L. T. (N.S.) 648; 12 W. R. 310.

If a man applies to the presiding officer for a ballot paper in a name other than his name of origin, or in the name by which he is generally known, but in a name which appears on the register, and which was inserted by the overseers in the belief that it was the name of the applicant, and for the purpose of putting him on the register, he is entitled to vote, and is not a person who "applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person." *Reg. v. Fox*, 16 Cox, C. C. 166.

In order to sustain a conviction for personation it is not necessary to state in the indictment, or to prove at the trial, that the presiding officer at the booth where the offence was committed was duly appointed. *Semble*, the appointment of a presiding officer need not be in writing. *Reg. v. Garvey*, 16 Cox, C. C. 252 (C. C. R. Ir.)

(c) Treating is not the entertainment of equals by equals, but of an inferior by a superior, with the object of securing the good will of the inferior. *Norwich Election Petition*, 54 L. T. (N.S.) 625. Giving a school feast was held not to be treating in the *Aylesbury Election Petition*, 4 O'M. & H. 59. It must be proved that the voter got his refreshment on account of his having polled or being about to poll. *Per MANISTY, J.*, in *Hargreaves v. Simpson*, 4 Q. B. D. 403; 43 J. P. 767.

*Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.***Appendix.**

Section 23.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 77.

LXXVII. "Bribery," "treating," "undue influence," and "personation" include Definitions.
 respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

PART II.*Enactments relating to Disqualification of Electors.*

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51),
 ss. 37, 38.

XXXVII. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. Prohibition of disqualified persons from voting.
35 & 36 Vict. c. 60.
45 & 46 Vict. c. 50.

XXXVIII. (1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.(d) Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

(5.) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty. . . .

(6.) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to any election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions(e) to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(d) This section excludes the right of a person charged with any corrupt or illegal practice at a municipal election to be heard by his counsel or solicitor. *Reg. v. Mansel Jones*, 23 Q. B. D. 29; 60 L. T. (N.S.) 860; 37 W. R. 508; 53 J. P. 739. But such a person must have an opportunity of being heard at least by himself. *Reg. v. Mansel Jones*, 10 T. L. R. 515. Where after the trial of a municipal election petition the commissioner has reported persons as having been guilty of corrupt practices, the High Court has no jurisdiction to set aside or amend his report on the ground that the notice prescribed by this section was not given to the persons reported. *Preece v. Harding*, 24 Q. B. D. 110; 59 L. J. Q. B. 82; 61 L. T. (N.S.) 827; 38 W. R. 350; 6 T. L. R. 65; *Re Wigan Municipal Election Petition*, *Ex parte Johnson*, 38 Sol. Journ. 386.

(e) Now the Solicitor to the Treasury. 47 & 48 Vict. c. 58.

Appendix.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:—

- (a.) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses :
- (b.) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . . (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same ; and whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses :
- (c.) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * *

FOURTH SCHEDULE.

Section 21.

Form of Declaration by Candidate as to Expenses.

I , having been a candidate at the election of councillor for the borough [or ward] of , on the day of [and my agents do hereby solemnly and sincerely declare that I have paid] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, or any club, society or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant C. D.

Signed and declared by the above-mentioned declarant on the day
of , before me.

(Signed) E. F.
Justice of the Peace for .

Appendix.

THE DISUSED BURIAL GROUNDS ACT, 1884.

(47 & 48 VICT. CAP. 72.)

An Act for preventing the erection of Buildings on Disused Burial Grounds.

[14th August, 1884.]

WHEREAS an Act was passed in the session of Parliament holden in the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, to amend the laws concerning the burial of the dead in the metropolis, and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty, chapter one hundred and thirty-four, "to amend the laws concerning the burial of the dead in England, beyond the limits of the metropolis, and to amend the Act concerning the burial of the dead in the metropolis:" And whereas in pursuance of the provisions of the above recited Acts Orders in Council have been made for the discontinuance of burials in certain burial grounds within the metropolis and elsewhere: And whereas it is expedient that no buildings should be erected on any burial ground affected by any of such Orders in Council:

I. This Act may be cited as the Disused Burial Grounds Act, 1884.

Short title.

II. In this Act a "disused burial ground" shall mean a burial ground in respect of which an Order in Council has been made for the discontinuance of burials therein in pursuance of the provisions of the said recited Acts.(a)

Interpretation clause.

III. After the passing of this Act it shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship.(b)

No buildings to be erected upon disused burial grounds, except for enlargement, &c.

IV. Nothing in this Act shall prevent the erection of any building on a disused burial ground for which a faculty has been obtained before the passing of this Act.

Savings for buildings already sanctioned.

V. Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament.(c)

Savings of burial grounds sold by Act of Parliament.

(a) For the definition of a burial ground as used in this Act, see 50 & 51 Vict. c. 32, s. 4, *post*.

(b) A. agreed to sell to B. a chapel and adjoining ground, in which human remains were interred. Both A. and B. knew of the interments, and also that B. intended to use the ground for building. After the contract was entered into, and before completion, the above Act was passed, rendering building on "disused burial grounds" illegal. It was admitted that the land sold was a disused burial ground within the meaning of the Act. It was held that B. was, nevertheless, bound to complete his contract. *Bolesworth v. Davis*, 3 T. L. R. 214. A perpetual injunction was granted against a vestry for erecting a band stand on a disused burial ground which had been thrown open to the public as an open space. *Att. Gen. v. St. Pancras (Vestry of)*, 58 J. P. 22. And see *In re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, *ante*, p. 1111.

(c) This section applies to dispositions made after the Act. *In re Ecclesiastical Commissioners and New City of London Brewery Company's Contract* [1895], 1 Ch. 702; 64 L. J. Ch. 646; 43 W. R. 457; 11 T. L. R. 296; *Attorney General v. Trustees of London Parochial Charities*, 31 L. J. Notes, 83.

Appendix.

THE CANAL BOATS ACT, 1884.

(47 & 48 VICT. CAP. 75.)(a)

An Act to amend the Canal Boats Act, 1877.

[14th August, 1884.]

40 & 41 Vict.
c. 60.

WHEREAS it is expedient to amend the Canal Boats Act, 1877, in this Act referred to as the principal Act : (a)

Certificate of
registry made
void by struc-
tural altera-
tions.

I. A certificate of registration granted under the principal Act (b) shall cease to be in force in the event of any structural alterations having been made in the canal boat affecting the conditions upon which the certificate of registration has been obtained.

Penalty for con-
travention of
regulations
under Canal
Boats Act.

II. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act (c) or this Act, (d) and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

Enforcement of
Act by registra-
tion and sani-
tary authority,
and report to be
made.

III. It shall be the duty of every registration or sanitary authority within whose district any canal, or any part of a canal is situate, to enforce within such district the provisions of the principal Act and this Act, and any regulations made thereunder by the Local Government Board; and every such authority shall, within twenty-one days after the thirty-first day of December in every year, make a report to the Local Government Board as to the execution of the principal Act and this Act, and of the regulations made thereunder as aforesaid, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and regulations.

Inquiries and
reports by Local
Government
Board.

IV. The Local Government Board shall in every year present a report to both Houses of Parliament as to the execution of the principal Act and this Act, and the observance of the regulations made by them thereunder; and shall cause inquiries to be made from time to time by an inspector or inspectors to be appointed by them for that purpose.

Such inspectors shall for the purpose of any inquiry under this Act have, in relation to witnesses and their examination, the production of papers, and inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts, (e) and may enter any canal boat at any time by day, (f) and examine the same and every part thereof, and may, if need be, for the purpose of such inquiry detain the boat, but for no longer time than is necessary.

The master of the boat shall, if required by any such inspector, produce to him the certificate of registry, if any, of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such inspector may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such inspector under this section shall be deemed to be an obstruction of such inspector.

If such inspector is obstructed in the performance of his duty under this Act, the person obstructing him shall be liable to a fine not exceeding forty shillings.

Power to make
regulations as to
school certifi-
cates, &c.

V. The power to make regulations given to the Local Government Board by the principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by children in canal boats.

(a) See 40 & 41 Vict. c. 60, *ante*, p. 1073. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).(b) See 40 & 41 Vict. c. 60, s. 3, *ante*, p. 1074.(c) See 40 & 41 Vict. c. 60, s. 2, *ante*, p. 1073.(d) See section 5, *post*.(e) See note (i), *ante*, p. 1069.(f) See *post*, section 9.

VI. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced with respect to children in canal boats, and shall for that purpose direct Her Majesty's Inspector of Schools to communicate with the School Board and School Attendance Committees in their districts. **Appendix.**
Annual report by Education Department.

VII. A canal boat shall not be deemed to be lettered, marked, and numbered in conformity with section three of the principal Act, (g) unless it is so lettered, marked, and numbered on both sides of the canal boat, or in some suitable position on the stern of the boat, so that the lettering, marking, and numbering may be plainly visible from both sides of the canal whereon the boat may be. **Lettering and numbering of boats.**

VIII. Every fine recovered under the principal Act or this Act shall be paid in the case of a prosecution by any registration or sanitary authority or person authorized by any such authority to such authority or person, and if paid to such person shall be paid by him to such authority, and shall be applied towards the expenses of executing the principal Act and this Act, any Act to the contrary notwithstanding. **Application of fines.**

IX. The expression "by day" in the principal Act and this Act shall be deemed to include the hours between six o'clock in the morning and nine o'clock at night. **Definition of term "by day."**

X. If it shall at any time appear to the Local Government Board, on the representation of any registration or sanitary authority or of any inspector appointed under this Act, that the principal Act and this Act ought to apply to any vessel or class of vessels which would be within the definition of canal boat contained in section fourteen of the principal Act, if such vessels or class of vessels were not registered under the Merchant Shipping Act, 1854, and the Acts amending the same, the Local Government Board may declare that the principal Act and this Act shall apply to such vessel or class of vessels, although the same may be registered as aforesaid, and thereupon the same shall be deemed to be a canal boat or boats within the meaning of the principal Act and this Act, and the definition contained in section fourteen of the principal Act shall be amended accordingly. (h) **Amendment of definition canal boat.**

XI. This Act may be cited as the Canal Boats Act, 1884, and shall be construed as one with the Canal Boats Act, 1877, which Act and this Act may be cited together as the Canal Boats Acts, 1877 and 1884. **Short title and construction of Act.**

THE LOCAL LOANS SINKING FUNDS ACT, 1885.

(48 & 49 VICT. CAP. 30.) (i)

An Act to amend the Local Loans Act, 1875, as regards the Establishment of a Sinking Fund. [22nd July, 1885.]

WHEREAS it is expedient to amend the Local Loans Act, 1875, as regards the provision of sinking funds for the discharge of local loans: **38 & 39 Vict. c. 8.**

I. This Act may be cited for all purposes as the Local Loans Sinking Funds Act, 1885. **Short title.**

(g) *Ante*, p. 1073.

(h) This section amends the definition of canal boat in 40 & 41 Vict. c. 60, s. 14, *ante*, p. 1076.

(i) The above Act amends the Local Authorities Loans Act, 1875 (38 & 39 Vict. c. 83). Section 13 of that Act, *ante*, p. 1021, which provides for the discharge of loans, enacts that such discharge shall be secured by one or more of certain prescribed methods. Of these methods one relates to a sinking fund, and is in these words:—"When a sinking fund is prescribed, but not otherwise (such discharge shall be secured), by the establishment of a sinking fund, and the application thereof in manner in this Act mentioned." The amending Act in effect repeals the words printed in italics, and enables a loan to be discharged by means of a sinking fund, although it has not been prescribed by the special Act authorizing the loan.

Appendix. II. This Act shall not extend to Scotland or Ireland.

Limits of Act. III. This Act shall come into operation on the first day of September, one
Commencement of Act. thousand eight hundred and eighty-five.

Discharge of IV. Notwithstanding anything contained in the Local Loans Act, 1875, every
loans by sinking loan borrowed in manner provided by that Act may be discharged by the establish-
funds, ment of a sinking fund as therein mentioned, notwithstanding that a sinking fund
may not have been prescribed by the special Act authorizing the loan.

THE QUARRY (FENCING) ACT, 1887.

(50 & 51 VICT. CAP. 19.)

An Act to provide for the Fencing of Quarries.

[19th July, 1887.]

WHEREAS it is expedient to provide for the fencing of quarries in England and
Wales :

Short title. I. This Act may be cited as the Quarry (Fencing) Act, 1887.

Commencement of Act. II. This Act shall not come into operation until the first day of January, 1888.

Fencing of quarries. III. Where any quarry dangerous to the public is in open or unenclosed land,
within fifty yards of a highway or place of public resort dedicated to the public,
and is not separated therefrom by a secure and sufficient fence, it shall be kept
reasonably fenced for the prevention of accidents, and unless so kept shall be
deemed to be a nuisance liable to be dealt with summarily in manner provided by
the Public Health Act, 1875.(a)

(a) An unfenced quarry which is within this section is, therefore, a nuisance within the meaning of section 91 of the Public Health Act, 1875, *ante*, p. 108. Proceedings may, therefore, be taken against the owner under that and the succeeding sections. Notice must be given to the owner or occupier under section 94 requiring the nuisance to be abated by the erection of a proper fence. If the notice is disregarded complaint may be made to justices under section 96, and the local authority may themselves abate the nuisance and recover the expenses under section 97.

It should be noticed that this Act applies to quarries which are being worked as well as to those which have ceased to be worked. In this respect it differs from the somewhat similar provisions of the Coal Mines Regulation Act, *post*, and the Metalliferous Mines Regulation Act, 1872, *ante*, p. 999.

The plaintiff was in the occupation of the surface of a field, and the defendants were in the occupation of a quarry in the same field. Both held under the same landlord. The quarry was entirely unfenced. One of the plaintiff's bullocks fell into the quarry and was killed. It was held that the plaintiff was entitled to recover damages from the defendants for the loss of the bullock. *Hawken v. Shearer and Another*, 56 L. J. Q. B. 284; W. N. (1887) 89.

A proprietor is under no obligation to fence a disused quarry on his property which is at a distance of upwards of 150 yards from the nearest point of the public road. A person on a dark night left the public road, and was found in a dying state at the bottom of the face of a disused quarry, 18 feet in height. The quarry was more than 150 yards from the nearest point of the public road. A path, which had served as an access to the quarry when it was in use eight years before, left the public road about 200 yards from the quarry, and continued towards the quarry, which was overgrown with long grass and willows. The path was occasionally used by inhabitants of the district, but against the remonstrances of the proprietor and his tenant, passed within six yards of the edge of the quarry face. The person who had fallen in was a stranger in the district, and was unable to give any account of how he had reached the spot where he fell. In an action for damages against the proprietor by the representatives of the deceased, a jury found for pursuers. A new trial was granted on the ground that the evidence disclosed no fault on the part of the defender. *Prentice v. The Assets Company, Limited*, 17 Ct. of Sess. Cas., 4th Series, 484.

IV. In this Act—

The term “quarry” includes every pit or opening made for the purpose of getting stones, slates, lime, chalk, clay, gravel, or sand, but not any natural opening.

Appendix.
Interpretation.

V. This Act shall not extend to Scotland and Ireland.

Extent of Act.

THE WATER COMPANIES (REGULATION OF POWERS) ACT, 1887.

(50 & 51 VICT. CAP. 21.)

An Act to limit the Powers of the Water Companies to cut off the Tenant's Water Supply where the Rate is paid by the Landlord. [8th August, 1887.]

WHEREAS it is expedient to make further provision with respect to the powers of companies supplying water for profit in England:

I. This Act may be cited as the Water Companies (Regulation of Powers) Act, Short title.
1887.

II. This Act shall not extend to Scotland or Ireland.

Extent of Act.

III. This Act shall apply to every water company which is a trading company supplying water for profit, and to which any of the provisions of the Waterworks Clauses Act, 1847, have been or shall be made applicable by any special Act or provisional order confirmed by Parliament, and every such special Act or provisional order shall be deemed to be amended by this Act, and shall be construed accordingly.(b)

Application of Act.

IV. Where the owner and not the occupier is liable by law(c) or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, no water company shall cut off the water supply for non-payment of the water-rate,(d) but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner,(e) shall together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises;(f) and (without prejudice to such charge) the amount may be recovered with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered:(g) Provided always, that proceedings shall

Water not to be cut off where the water rate is payable by the owner.

(b) The object of this Act is explained by the title. From this section it appears that it does not apply to a local authority supplying water by virtue of the powers contained in the Public Health Act, 1875, as such an authority is not a trading company supplying water for profit. The provisional order here referred to is an order obtained under the Gas and Waterworks Facilities Acts (33 & 34 Vict. c. 70), *ante*, p. 942, and 36 & 37 Vict. c. 89, *ante*, p. 1006.

(c) The owner of a house not exceeding 10*l*. rent is liable to pay water rates by virtue of 10 & 11 Vict. c. 17, s. 72, *ante*, p. 886.

(d) The power to cut off the supply of water for non-payment of water rate is given by 10 & 11 Vict. c. 17, s. 74, *ante*, p. 886.

(e) These remedies are given by 10 & 11 Vict. c. 17, s. 74, *ante*, p. 886, and 26 & 27 Vict. c. 93, s. 16, *ante*, p. 937.

(f) See the notes to the corresponding provisions of section 257 of the Public Health Act, 1875, *ante*, p. 341. The words “in priority to all other charges” appear to be superfluous, as the charge under the Act would affect the property in the hands of a mortgagee. See *Birmingham (Corporation of) v. Baker*, 17 Ch. D. 782; 46 J. P. 52.

(g) See note (e), *supra*.

Appendix. — not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate; and provided also, that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand.(a)

Penalty on cutting off of supply in contravention of the Act.

V. In the event of any such supply being cut off in contravention of this Act, the company cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to the person aggrieved.(b)

THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

(50 & 51 VICT. CAP. 26.)

An Act to provide Compensation to the Occupiers of Allotments and Cottage Gardens for crops left in the ground at the end of their tenancies.

[8th August, 1887.]

Short title.

I. This Act may be cited as the Allotments and Cottage Gardens Compensation for Crops Act, 1887.(c)

Extent of Act.

II. This Act shall not extend to Scotland or Ireland or to the metropolis.

Commencement of Act.

III. This Act shall come into force on the first day of January, one thousand eight hundred and eighty-eight, which day is in this Act referred to as the commencement of this Act.

Definitions.

IV. In this Act—

18 & 19 Vict.
c. 120.

“The metropolis” means the city of London and all parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855.

“Allotment” means any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm.

“Cottage garden” means an allotment attached to a cottage.

“Holding” means an allotment or cottage garden.

“Tenant” means the holder of a holding under a landlord for any term, and includes the legal personal representative of a deceased tenant.

(a) A landlord gave a tenant notice to quit, and on the tenant continuing to remain in possession gave notice to a water company to cut off the supply, which they did. It was held that as the cutting off had not been for non-payment of the water rate, the above Act did not apply. *Chelsea Waterworks Company v. Paulet*, 4 T. L. R. 239.

The effect of the above section is, that a purchaser of the freehold of a dwelling-house is liable to a personal action at the suit of the waterworks company to recover arrears of water rate which accrued due before the date of the purchase. *East London Waterworks Company v. Kellerman* [1892], 2 Q. B. 72; 67 L. T. (N.S.) 319; 56 J. P. 773.

(b) The penalty must be recovered by proceedings before justices at the instance of the occupier, who is the only “person aggrieved.”

(c) This Act applies to sanitary authorities only in so far as they may provide allotments under the Allotments Act, 1887, *post*. In such case they are landlords as defined by section 4 of this Act.

This Act is amended in so far as it relates to the compensation payable to tenants for improvements when the land is under mortgage and the mortgagee takes possession, by 53 & 54 Vict. c. 57, *post*.

“Landlord” means the person for the time being entitled to receive the rents and profits of any holding.^(d) **Appendix.**

“Person” includes a body of persons and a corporation aggregate or sole.

“Contract of tenancy” means the letting of land for any term.

“Determination of tenancy” means the cesser of a contract of tenancy by effluxion of time or from any other cause.

The designations of landlord and tenant shall for the purposes of this Act continue to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of a tenancy.

V. Upon the determination of the tenancy of a holding after the commencement of this Act the tenant shall be entitled notwithstanding any agreement to the contrary to obtain from the landlord compensation in money for the following matters and things, that is to say :—

- (a.) For crops, including fruit, growing upon the holding in the ordinary course of cultivation, and for fruit trees and fruit bushes growing thereon, which have been planted by the tenant with the previous consent in writing of the landlord.^(e)
- (b.) For labour expended upon and for manure applied to the holding since the taking of the last crop therefrom in anticipation of a future crop.
- (c.) For drains and for any outbuildings, pigsties, fowlhouses, or other structural improvements made by the tenant upon his holding with the written consent of his landlord.^(f)

VI. In the ascertainment of the amount of compensation payable to the tenant under this Act, any sum due to the landlord in respect of rent or of any breach of the contract of tenancy or wilful or negligent damage committed or permitted by the tenant shall be taken into account in reduction of the amount of compensation.^(g) Deduction from compensation on account of rent or breach of contract.

VII. The landlord and tenant may agree upon the amount and time of payment of compensation to be paid under this Act. If in any case they do not agree, the difference shall be settled by an arbitrator. Compensation if not agreed upon to be settled by an arbitrator.

VIII. If the landlord and tenant concur they may within twenty-eight days after the determination of the tenancy jointly appoint such arbitrator. If they do not concur, such arbitrator shall be appointed in the following manner :—

- (1.) The landlord and tenant or either of them may apply personally or in writing

^(d) This definition, as explained by the next one, will include a sanitary authority who have provided allotments under the Allotments Act, 1887, *post*.

^(e) The Allotments Act, 1887, s. 7, sub-sect. (6), provides that the tenant of an allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation. It will be observed that the text gives a right of compensation only in respect of fruit trees and fruit bushes planted with the consent in writing of the landlord. All other trees and bushes and all fruit trees and fruit bushes planted without this consent must be removed by the tenant if he desires to have the benefit of them. Having regard to section 18 of this Act, *post*, it would seem that this provision overrides the provisions of the Market Gardeners' Compensation Act, 1895 (58 & 59 Vict. c. 27), which is to be read and construed as part of the Agricultural Holdings (England) Act, 1883, as amended by the Tenants' Compensation Act, 1890.

^(f) It is difficult to reconcile this with the Allotments Act, 1887, s. 8, sub-sect. (5), *post*. By that section the tenant of an allotment is allowed to erect certain specified buildings. He may remove such buildings at the end of his tenancy, but he cannot claim compensation for them. Compensation may, however, be claimed for drains under this section.

^(g) This may enable a sanitary authority to counterclaim in respect of any breach of the regulations made under section 6 of the Allotments Act, 1887, *post*. If a greater amount is due from the tenant to the sanitary authority for rent or breach of regulations than from the authority to the tenant for compensation, the arbitrator cannot award the balance to the sanitary authority, but they must take the ordinary proceedings for recovery of the balance. *In re Holmes and Formby* [1895], 1 Q. B. 174; 64 L. J. Q. B. 391; 71 L. T. (N.S.) 342; 43 W. R. 205.

Appendix.

to the justices of the peace, acting for the petty sessional division in which the holding is situated, in petty sessions, and such justices shall, upon the receipt of the application, appoint one of their number not being interested in the holding,^(a) or other competent person not being interested as aforesaid, to act as such arbitrator.

- (2.) If before award the person so appointed dies or becomes incapable of acting or for seven days after his appointment fails to act the justices shall appoint in manner aforesaid another arbitrator.

Justices if practicable to appoint person to act as arbitrator without remuneration.

IX. The justices shall in all cases in which it is practicable obtain the consent of the arbitrator to act without remuneration, and in any case in which it is impracticable to obtain such consent they shall direct that the arbitrator shall be paid such moderate sum as they consider will reasonably remunerate him for his time and expenses.

Time for commencement of arbitration.

X. The arbitrator shall proceed to determine any difference referred to him under this Act within seven days after his appointment.

Power for arbitrator to administer oaths.

XI. The arbitrator if he shall consider it desirable or necessary so to do, shall have power to call for the production of any document which is in the possession of either party, or which either party can produce, and which to the arbitrator seem necessary for determination of the difference referred to him, and to take the examination of the parties and witnesses on oath and to administer oaths and take affirmations, and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

Power to proceed in absence of either party.

XII. The arbitrator may proceed in the absence of either party after notice given to both parties.

Form of award and time for its delivery.

XIII. The award shall be in writing signed by the arbitrator, and shall be ready for delivery within fourteen days after his appointment or within such extended time not exceeding in the whole twenty-eight days after his appointment as the parties may agree upon in writing.^(b)

Costs of arbitration.

XIV. The costs (if any) of and attending the arbitration including the remuneration (if any) of the arbitrator shall be borne and paid by the parties in such proportion as to the arbitrator appears just, and the award may direct the payment of the whole or any part of the aforesaid costs by the one party to the other, or may declare that no costs shall be payable.^(c)

Day for payment.

XV. The award shall fix a day not sooner than fourteen days after the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise.^(d)

Award to be final.

XVI. The award shall be final and conclusive in every case; and neither the submission to arbitration or the award shall be made a rule of any court, or be removable by any process into any court.

Recovery of compensation money.

XVII. Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it shall be recoverable upon order made by the judge of the

(a) The chairman of the district council being also a justice of the peace *virtute officii*, under section 22 of the Local Government Act, 1894, might be considered interested in the holding.

(b) The arbitrator cannot himself extend the time. That must be done by the written agreement of the parties. It is to be observed that under section 10 the arbitrator must proceed to determine the matters in dispute within seven days, though he may deliver his award within fourteen days, or within the extended time, if any.

(c) The arbitrator must himself determine the costs.

(d) By section 8, sub-section (2), of the Allotments Act, 1887, *post*, the compensation is to be paid on demand, but this may refer only to compensation which is not in dispute. By the same section, sub-section (3), if proceedings are taken for the recovery of an allotment the court may stay delivery of possession until the compensation has been paid.

county court within the district of which the holding is situated, as money ordered to be paid by a county court under its ordinary jurisdiction is recoverable. **Appendix.**

XVIII. No claim for compensation shall be made under the Agricultural Holdings (England) Act, 1883, for any matter or thing in respect of which a claim for compensation is made under this Act, and in any case in which the provisions of that Act and of this Act conflict, the provisions of this Act shall prevail.^(e)

No claim to be made under the Agricultural Holdings (England) Act for any matter or thing for which a claim is made under this Act.

THE MARKETS AND FAIRS (WEIGHING OF CATTLE) ACT, 1887.

(50 & 51 VICT. CAP. 27.)(f)

An Act to amend the Law with respect to weighing Cattle in Markets and Fairs.

[8th August, 1887.]

WHEREAS it is expedient to afford like facilities for weighing cattle in markets and fairs as are afforded for weighing goods and carts under the Markets and Fairs Clauses Act, 1847, in markets and fairs to which that Act applies.^(g)

10 & 11 Vict. c. 14.

I. This Act may be cited as the Markets and Fairs (Weighing of Cattle) Act, 1887. **Short title.**

II. This Act, save as hereinafter provided, shall apply to all markets and fairs in which tolls are for the time being authorized to be taken and actually are taken in respect of cattle by any company, corporation, or person; and every such company, corporation, or person is in this Act called "the market authority."^(h) **Application of Act.**

III. In this Act the word "cattle" includes⁽ⁱ⁾ ram, ewe, wether, lamb, and swine. **Interpretation.**

IV. In or near^(k) to every market or fair to which this Act applies, the market authority shall provide and maintain sufficient and proper buildings or places for weighing cattle brought for sale within the market or fair, and shall keep therein or near thereto weighing machines and weights for the purpose of weighing cattle, and shall appoint proper persons to have charge of such machines and weights, and to afford the use of such machines and weights to the public for weighing cattle as may be from time to time required. **Accommodation for weighing cattle to be provided.**

The market authority shall have the accuracy of such weighing machines and weights tested at least twice in every year by the local inspector of weights and measures of and for the county, borough, or place where the market is situate, and the cost of such testing shall be borne by such market authority.

If the market authority fail to comply with the provisions of this section, it shall not be lawful for them to demand, receive, or recover any toll whatever in respect

^(e) The Allotments Act, 1887, s. 8, provides that where proceedings are taken for the recovery of an allotment the tenant may elect to have his compensation determined under this Act or under the Agricultural Holdings Act, 1883.

^(f) This Act is amended in some important respects by 54 & 55 Vict. c. 70, *post*. In particular its application is extended to auction marts.

^(g) The provisions of the Markets and Fairs Clauses Act, 1847, here referred to, are the 10 & 11 Vict. c. 14, ss. 21–30. These provisions are incorporated with the Public Health Act, 1875, by section 167 of that Act, and are set out, *ante*, p. 858. As to the omission of the clause of enactment to this Act, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

^(h) The Act will, therefore, apply to local authorities which possess or have the control of markets, whether by virtue of the Public Health Act or otherwise, if their tolls include tolls for cattle, and such tolls are actually taken.

⁽ⁱ⁾ See the observations on the word "includes" on p. 5, note ^(b), of this work. Its effect is to extend the meaning of the term with reference to which it is used, so that the word "cattle" in this Act will include not only the animals ordinarily described as "cattle," but also the animals enumerated in the section.

^(k) Observe that the necessary accommodation need not be actually in the market. It may be *near* it, *i.e.*, in some convenient place outside, but not far from the market.

Appendix.

of any cattle brought to the market or fair for sale so long as such failure continues, but this enactment shall not apply till after the first day of January, one thousand eight hundred and eighty-eight.^(a)

Any person who demands or receives any toll in respect of cattle in any market or fair to which for the time being this Act applies,^(b) but in which the market authority have not complied with the provisions of this Act, shall be liable on summary conviction^(c) to a fine not exceeding five pounds.

Cattle to be weighed at option of seller or buyer.

V. Every person selling, offering for sale, or buying any cattle in a market or fair provided with accommodation for weighing cattle may require such cattle to be weighed, and the tolls payable in respect of the weighing shall be paid by the person requiring the cattle to be weighed to the person authorized by the market authority, to receive the tolls.

Penalty for refusal to weigh cattle or to give ticket, &c.

VI. Every person appointed by the market authority to weigh cattle sold in the market or fair, who—

- (a.) Refuses or neglects to weigh the same when required; or
- (b.) Refuses or neglects to deliver to the seller or buyer a ticket specifying the true weight of the cattle weighed; or
- (c.) Gives to any person a false ticket on account of any cattle weighed;^(d)

shall be liable on summary conviction to a fine not exceeding forty shillings and not less than half a crown.^(e)

Penalty for fraud.

VII. Every person who knowingly acts or assists in committing any fraud respecting the weighing of any cattle weighed in pursuance of this Act, shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.^(e)

(a) It will be necessary for every market authority to which the Act applies (see note ^(h), *ante*, p. 1207) to provide the weighing accommodation required by the Act, otherwise tolls for cattle cannot be demanded or taken until the Act is complied with.

The 54 & 55 Vict. c. 70, s. 2, *post*, provides that the market authority of every market or fair shall, unless exempted by order of the Board of Agriculture, provide and maintain to the satisfaction of the Board sufficient and suitable accommodation for weighing cattle, and that default of so doing shall be deemed default in complying with the above section.

In December, 1887, the plaintiffs, as the market authority under the above section, took steps to provide a weighing machine for cattle upon a site in their market place, which, according to the plaintiff's contention, consisted of two long and narrow strips in the market town separated by the highway. The defendants interfered, their contention being that the market place was not distinct from the highway; but the entire space upon which the markets were held was a public highway dedicated to the use of the public, subject only to the right of the owner of the soil for the time being, or her lessees, to hold markets thereon, and that the market place, as a highway, was vested in them, the defendants, as an urban authority, under the Public Health Act, 1875, and that the proposed weighing machine would be a public nuisance, and interfere with their rights in such highway, and with the public right of passage thereon. It was held that the above section was an imperative section, and the market authority was not only at liberty, but was bound, to provide a proper weighing machine for their market, which, according to the Act, must be a permanent structure, and not a movable machine. It was also held that the defendants were entirely wrong in their contention, and that they must, therefore, be restrained from interfering with the plaintiff. *McIntosh v. Romford Local Board*, 61 L. T. (N.S.) 185; 5 T. L. R. 643.

(b) See note ^(h), *ante*, p. 1207.

(c) The effect of this provision is that the fine must be recovered pursuant to the Summary Jurisdiction Acts. See the Summary Jurisdiction Act, 1879, s. 51 (1), which regulates the application of the Summary Jurisdiction Acts to future Acts. There are no restrictions on the recovery of this fine, and it may be recovered at the instance of a common informer. The informer will not, however, receive any part of the fine, which is payable to the treasurer of the county or borough, as the case may be, as an unappropriated penalty under 11 & 12 Vict. c. 43, s. 31.

(d) No doubt the same person will be appointed to fulfil the duties imposed by this Act as is appointed to perform the similar duties imposed by 10 & 11 Vict. c. 14, s. 21, *ante*, p. 858. The duty of such person will be to weigh any cattle brought to the market for sale at the request of either the buyer or the seller, and after weighing to deliver a ticket specifying the true weight of the cattle weighed.

(e) See note ^(c), *supra*.

VIII. The market authority may, from time to time (unless otherwise expressly provided by any Act), demand and receive in respect of the weighing of cattle tolls not exceeding the amounts specified in the schedule to this Act, or such other amounts as may be authorized by the Local Government Board to be taken by the market authority; and sections thirty-six to forty-one (both included) of the Markets and Fairs Clauses Act, 1847,^(f) shall apply to the tolls mentioned in this section, as if this Act were the special Act, and the market authority were the undertakers.

Appendix.
Tolls for weighing cattle.

10 & 11 Vict. c. 14.

IX. (1.) The market authority of any market or fair may at any time apply to the Local Government Board to be exempted from the provisions of this Act on the ground that the sale of cattle at such market or fair is or is likely to be so small as to render it inexpedient to enforce the provision and maintenance of a place for weighing cattle and of a weighing machine under this Act; and thereupon the Local Government Board may by order declare that this Act shall not apply to such market or fair until after the expiration of a time not exceeding three years to be limited by such order. Any order made under this section may at any time be wholly or partially rescinded, altered, or extended by any subsequent order of the Local Government Board.^(g)

Power to exempt certain markets and fairs from provisions of Act.

(2.) This Act shall not apply to any market or fair to which any order under this section applies so long as it is declared by such order that this Act shall not apply thereto.^(h)

X. [*Application of Act to Scotland and Ireland.*]

THE SCHEDULE.

For every head of cattle other than sheep or swine	Not exceeding
For sheep or swine, every five or less number...	Twopence.
			One penny.

THE MARGARINE ACT, 1887.

(50 & 51 VICT. CAP. 29.)

An Act for the better Prevention of the Fraudulent Sale of Margarine.⁽ⁱ⁾
[23rd August, 1887.]

WHEREAS it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances :

I. This Act may be cited as the Margarine Act, 1887.

Short title.

II. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

Commencement of Act.

^(f) See these sections, *ante*, p. 860. They relate, *inter alia*, to the recovery of the tolls, and require a list of the tolls to be set up in conspicuous places.

^(g) The powers of the Local Government Board are now transferred to the Board of Agriculture. 54 & 55 Vict. c. 70, s. 1, *post*. And see sections 2 and 4 of that Act as to exemptions by the Board. Any applications for orders of exemption should be accompanied by full particulars as to the nature and extent of the sales of cattle in the market, fair, or mart during the previous three years, and as to the amounts of tolls levied. *Circular Letter of the Board of Agriculture, dated 25th November, 1891.*

^(h) This section contains the only exception to the application of the Act to local authorities who have markets in which tolls are charged for the sale of cattle.

⁽ⁱ⁾ This Act imposes important powers and duties on medical officers and inspectors of nuisances, and is really supplemental to the Sale of Food and Drugs Acts (38 & 39 Vict. c. 63, *ante*, p. 1007, and 42 & 43 Vict. c. 30), *ante*, p. 1103.

Appendix.**Definition.**

III. The word "butter" shall mean the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

The word "margarine" shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not, and no such substance shall be lawfully sold, except under the name of margarine, and under the conditions set forth in this Act.

Penalty.

IV. Every person dealing in margarine, whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine not exceeding twenty pounds, and for the second offence to a fine not exceeding fifty pounds, and for the third or any subsequent offence to a fine not exceeding one hundred pounds.(a)

Exemption from penalty.

V. Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

Marking of cases.

VI. Every person dealing in margarine in the manner described in the preceding section shall conform to the following regulations:

Every package, whether open or closed, and containing margarine, shall be branded or durably marked "Margarine" on the top, bottom, and sides, in printed capital letters, not less than three-quarters of an inch square; and if such margarine be exposed for sale,(b) by retail, there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than one-and-a-half inches square, "Margarine;" and every person selling margarine by retail, save in a package duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in or with a paper wrapper, on which shall be printed in capital letters, not less than a quarter-of-an-inch square, "Margarine."(c)

Presumption against vendor.

VII. Every person dealing with, selling, or exposing, or offering for sale, or having in his possession for the purpose of sale, any quantity of margarine con-

(a) See section 12, *post*.

(b) The respondent kept margarine for sale in his shop, in a parcel which was not labelled, behind a screen and not in sight of customers. There was no evidence that this was done for the purpose of evading the Act. It was held that the margarine was not exposed for sale within the meaning of the above section. *Crane v. Lawrance*, 25 Q. B. D. 152; 59 L. J. M. C. 110; 63 L. T. (N.S.) 197; 38 W. R. 620; 54 J. P. 471; 17 Cox, C. C. 135; 6 T. L. R. 370. The meaning of the words "exposed for sale" is not limited to such an exposure as will enable purchasers to see the margarine itself. Margarine when wrapped in paper so as to be invisible to the purchaser may be exposed for sale within the meaning of the above section. *Wheat v. Brown* [1891], 1 Q. B. 418; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 642; 56 J. P. 153; 8 T. L. R. 294.

(c) In Scotland it has been held that a wrapper having "Margarine" printed on it in letters of the size and type required by this section, and in such a way as to stand out as a word by itself, is in compliance with this section, although there is other matter of the nature of a trade advertisement printed on other parts of the wrapper. *Fyfe v. M'Laughlin*, 30 Scottish Law Reporter, 899; and see *World's Tea Company v. Gardiner*, 59 J. P. 358. This section does not apply to the sale of margarine spread on bread, and sold in a refreshment house as bread and butter. *Moore v. Pearce's Dining and Refreshment Rooms, Limited* [1895], 2 Q. B. 657; 65 L. J. M. C. 7; 73 L. T. (N.S.) 400; 59 J. P. 805; 12 T. L. R. 2. As to the sale of marked boxes in brown paper not marked, see *Toler v. Bishop*, 65 L. J. M. C. 4; 73 L. T. (N.S.) 403; 60 J. P. 9; 12 T. L. R. 3. The word "margarine" need not be the only word on the wrapper, so long as there is no intention to conceal that word by the additional matter. *World's Tea Company v. Gardiner*, *supra*.

trary to the provisions of this Act, (d) shall be liable to conviction for an offence against this Act, (e) unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter, and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter, and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence. (f)

Appendix.

VIII. All margarine imported into the United Kingdom of Great Britain and Ireland, and all margarine whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine; and it shall be lawful for any officer of Her Majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances, or police constable, authorized under section thirteen of the Sale of Food and Drugs Act, 1875, (g) to procure samples for analysis if he shall have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against this Act has been committed. (h)

Margarine imported or manufactured.

38 & 39 Vict. c. 63.

IX. Every manufactory of margarine within the United Kingdom of Great Britain and Ireland shall be registered by the owner or occupier thereof with the local authority (i) from time to time in such manner as the Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct, and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence under this Act. (k)

Registration of manufactory.

X. Any officer authorized to take samples under the Sale of Food and Drugs Act, 1875, (l) may, without going through the form of purchase provided by that Act, (m) but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, (n) take for the purposes of analysis samples of any butter, or substances purporting to be butter, which are exposed for sale, and are not marked Margarine, as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter.

Power to inspectors to take samples without purchase.

XI. Any part of any penalty recovered under this Act may, if the court shall so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the court shall consider him entitled. (o)

Appropriation of penalties.

XII. All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve to twenty-eight inclusive of the Sale of

Proceedings.

(d) The provisions here referred to are those in the preceding section.

(e) The punishment for such offence is prescribed by section 4, *ante*.

(f) This provision is similar to that contained in 38 & 39 Vict. c. 63, s. 25, *ante*, p. 1014. The effect of the whole section is to throw on the defendant the burden of disproving intent and knowledge, not to make him liable irrespective of his state of mind. *Fitzgerald v. Leonard*, 32 L. R. Ir. 675.

(g) See this section, *ante*, p. 1011.

(h) Observe that the power conferred by this section is not, like that given by 38 & 39 Vict. c. 63, s. 13, confined to the procuring of samples; the officer may examine and take samples from any package.

(i) See the definition of a local authority in section 13, *post*.

(k) See section 4, *ante*. A general order as to the registration of manufactories of margarine, dated the 23rd December, 1887, has been issued under this section by the Local Government Board, and will be found in Appendix II.

(l) The officers here referred to are those mentioned in 38 & 39 Vict. c. 63, s. 13, *ante*, p. 1011. They include medical officers and inspectors of nuisances.

(m) In other words, the officers need not purchase, they may take samples.

(n) See 38 & 39 Vict. c. 63, ss. 14—16, *ante*, p. 1011.

(o) See 38 & 39 Vict. c. 63, s. 26, *ante*, p. 1015. See, also, *Reg. v. Titterton, Ex parte Quelch* [1895], 2 Q. B. 61; 64 L. J. M. C. 202; 73 L. T. (N.S.) 345; 43 W. R. 603; 59 J. P. 327; 11 T. L. R. 394.

Appendix. Food and Drugs Act, 1875,(a) and all officers employed under that Act are hereby empowered and required to carry out the provisions of this Act.

Definition
of local
authority.

XIII. The expression "local authority" shall mean any local authority authorized to appoint a public analyst under the Sale of Food and Drugs Act, 1875.(b)

THE OPEN SPACES ACT, 1887.

(50 & 51 VICT. CAP. 32).(c)

An Act for extending certain Provisions of the Metropolitan Open Spaces Acts, 1877 and 1881, with Amendments, to Sanitary Districts throughout England, Wales, and Ireland; and for other purposes. [23rd August, 1887.]

40 & 41 Vict.
c. 35.
44 & 45 Vict.
c. 34.

WHEREAS by the Metropolitan Open Spaces Acts, 1877 and 1881 (herein called the principal Acts), certain facilities were provided for making available the open spaces and burial grounds in the metropolis for the use of the inhabitants thereof for exercise and recreation, and it is expedient to provide facilities for making available open spaces and burial grounds in all sanitary districts in England, Wales, and Ireland, for the like use of the inhabitants thereof, and to make other provisions for the purpose aforesaid, and also to amend the Metropolitan Open Spaces Act, 1881, and the Disused Burial Grounds Act, 1884:

47 & 48 Vict.
c. 72.

Interpretation.

I. In this Act, unless the context otherwise requires, the expression "urban sanitary district" and the expression "urban authority" respectively, and the expressions "rural sanitary district" and "rural authority" respectively, shall have the meanings assigned to them respectively by the Public Health Act, 1875.(d)

38 & 39 Vict.
c. 55.

Amendment of
44 & 45 Vict.
c. 34.

II. (1.) The Metropolitan Open Spaces Act, 1881, is hereby repealed to the extent mentioned in the Schedule to this Act, and the second section of the said Act is hereby amended, as follows (that is to say,) the purchase money paid for or in respect of the purchase of any open space(e) as herein mentioned shall be held in trust, either as in the said section mentioned, or as the case may be, for the benefit of the objects to which any rates previously imposed in respect of such open space had been applied.

(2.) The playing of any games or sports shall not be allowed in any churchyard, cemetery, or burial ground in or over which any estate, interest, or control is acquired under section five of the Metropolitan Open Spaces Act, 1881.(f)

Provided that—

(a.) In the case of consecrated ground, the bishop, by any license or faculty granted under the Metropolitan Open Spaces Act(g) or this Act; and

(a) *Ante*, pp. 1011—1015. Consequently, the notification, division and analysis, required by sections 20 and 21 of the Act of 1875 are conditions precedent to proceedings for an offence against this Act. *Smart v. Watts* [1895], 1 Q. B. 219; 64 L. J. M. C. 89; 71 L. T. (N.S.) 768; 43 W. R. 379; 59 J. P. 54; 11 T. L. R. 144.

(b) See 38 & 39 Vict. c. 63, s. 10, *ante*, p. 1010.

(c) This Act extends to urban and rural sanitary districts the provisions of the Acts in force in the metropolis relating to open spaces. The Act is extended by 53 & 54 Vict. c. 15, *post*.

(d) See the Public Health Act, 1875, s. 5, *ante*, p. 24.

(e) For the definition of an open space as amended by this Act, see the 44 & 45 Vict. c. 34, s. 1, *ante*, p. 1110.

(f) For the definition of the term "burial ground," see the 44 & 45 Vict. c. 34, s. 1, *ante*, p. 1111.

(g) See 44 & 45 Vict. c. 34, s. 5, *ante*, p. 1113. See also *Re Camden Town Burial Ground*, 5 T. L. R. 311.

(b.) In the case of any churchyard, cemetery, or burial ground which is not consecrated, the body from which any such estate, interest, or control as aforesaid is acquired, may expressly sanction any such use of the ground, and may specify any conditions as to the extent or manner of such use. Appendix. —

III. In the case of any disused churchyard, cemetery, or burial ground, at least three months before any tombstone or monument is moved, the following steps shall be taken :— Provision as to removal of tombstones and monuments.

- (a.) A statement shall be prepared sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary;
- (b.) Such statement shall be deposited with the clerk of the board or vestry, and shall be open to inspection by all persons;
- (c.) An advertisement of the intention to remove or change the position of such tombstones and monuments shall be inserted three times at least in some newspaper circulating in the neighbourhood of the burial ground, and such advertisement shall give notice of the deposit of such statement as is hereinbefore described, and of the hours within which the same may be inspected;
- (d.) A notice in terms similar to the advertisement shall be placed on the door of the church (if any) to which such churchyard, cemetery, or burial ground is attached, and shall be delivered or sent by post to any person known or believed by the board or vestry to be a near relative of any person whose death is recorded on any such tombstone or monument.

In the case of any consecrated ground no application for a faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid.

Provided that on any application for a faculty, nothing shall prevent the bishop from directing or sanctioning the removal of any tombstone or monument if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal to the notice of some person having a family interest in such removal.

IV. In the Disused Burial Grounds Act, 1884,^(h) and this Act, the expression “burial ground” shall have the same meaning as in the Metropolitan Open Spaces Act, 1881, as amended by this Act,⁽ⁱ⁾ and the expression “disused burial ground”^(k) shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council, and the expression “building” shall include any temporary or movable building. Amendment of 47 & 48 Vict. c. 72.

V. All the provisions of the principal Acts as amended by this Act (except sections four, five, six, seven, and eight of the Metropolitan Open Spaces Act, 1877, and so much of section six of the Metropolitan Open Spaces Act, 1881, as begins with the words “bye-laws made under this Act” and ends with the figures “1855,” and also except sections ten, eleven, twelve, and thirteen of the last-mentioned Act)^(l) shall extend and be applicable to and in respect of any and every urban sanitary district, and any and every rural sanitary district in respect of which the sanitary authority shall have been invested by an order of the Local Government Board with the powers of this Act, and to the open spaces and burial grounds in such districts respectively; and for the purpose of such extension and Extension of certain provisions of Metropolitan Open Spaces Acts to urban and certain rural sanitary districts.

(h) *Ante*, p. 1199. See *In re Ecclesiastical Commissioners and New City of London Brewery Company, Limited* [1895], 1 Ch. 702; 72 L. T. (n.s.) 481; 43 W. R. 457; 11 T. L. R. 296.

(i) See section 1 of that Act, *ante*, p. 1110.

(k) The combined effect of the Open Spaces Act, 1881, s. 1, the Disused Burial Grounds Act, 1884, s. 2, and sections 2, 4, and the Schedule to this Act makes this term include land, whether consecrated or not, set apart for although never used for interments. *Re Ponsford and Newport District School Board* [1894], 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358.

(l) All these provisions as amended by this Act are set out *ante*.

Appendix. application to every such district, every urban authority and every such rural authority shall have and may exercise, and there shall be vested in such authority in and for its district, all and every or any such powers, authorities, and capacities in respect of, or in relation to, open spaces or burial grounds within such district as the Metropolitan Board of Works, herein called the Metropolitan Board, by virtue of the principal Acts as amended by this Act have or may exercise or enjoy with regard to open spaces or burial grounds within the Metropolis or any of them; and for the purposes of this Act and in respect of any and every open space or burial ground within any such sanitary district, and of any and every such authority, the principal Acts shall be read and take effect as if the word "Metropolis" when used therein meant the same sanitary district, and as if the words "Metropolitan Board" and "Board" when used therein meant the authority of the same district, and as if the words "any two or more London daily papers," whenever they occur therein, meant "any two or more local newspapers circulating within the sanitary district."

Extension of
40 & 41 Vict.
c. 35, to vestries
and district
boards.

VI. All powers and duties conferred upon the Metropolitan Board by the Metropolitan Open Spaces Act, 1877, may, after the passing of this Act, be exercised and performed by any vestry or district board of works for the parishes and districts specified in Schedules A. and B. of the Metropolis Management Act, 1855, as amended by subsequent Acts.

Power of
corporation to
make free gift of
land for open
space.

VII. Any corporation other than a municipal corporation or body of persons having power, either with or without the consent of any other corporation or body of persons, to sell land belonging to such corporation or body may, but with the like consent (if any), convey, for valuable or nominal consideration or by way of gift, to any urban or rural authority such land, or any part thereof, for the purpose of the same being preserved as an open space for the enjoyment of the public, and may so convey the same with or without conditions, and the urban or rural authority may accept such open space, and, if conditions are imposed, subject to such conditions, and such open space shall be deemed to be an open space within the meaning of the principal Acts and this Act.

Where a corporation having power under this section to convey land are themselves the urban or rural authority, this section shall enable such authority to appropriate their land for an open space, and shall, with the necessary modifications, apply to such appropriation in like manner as it applies to the conveyance.^(a)

Expenses.

VIII. (1.) All expenses incurred under this Act by an urban or a rural authority shall be deemed to have been incurred in the execution of the Public Health Act, 1875, and shall be defrayed accordingly, and the purposes of this Act shall be deemed to be the purposes of the Public Health Act, 1875.^(b)

(2.) Provided that the expenses incurred by a rural authority shall be deemed to be special expenses under that Act incurred in respect of the contributory place or places for which the powers of this Act are exercised, and all the provisions of the Public Health Act, 1875, which would be applicable in the case of an apportionment of special expenses for works for the common benefit of two or more contributory places, shall apply to any such expenses.

Saving for
Crown lands.

IX. This Act shall not extend to any land belonging to Her Majesty in right of Her Crown or of Her Duchy of Lancaster, or to any garden or ornamental ground for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings.

Bye-laws.

X. All the provisions with respect to bye-laws contained in sections one hundred and eighty-two to one hundred and eighty-six (both inclusive) of the Public

^(a) Sanitary authorities have power to sell land not required for the particular purpose for which it was acquired under section 175 of the Public Health Act, 1875, *ante*, p. 244. Instead of selling such land they may now appropriate it as an open space.

^(b) The expenses of an urban authority will be paid out of the general district fund. See section 207 of the Public Health Act, 1875, *ante*, p. 276. Those of rural authorities will be special expenses payable out of rates levied on the contributory place or places for which the open space was acquired. Public Health Act, 1875, s. 229, *ante*, p. 308.

Health Act, 1875,(c) shall apply to all bye-laws from time to time made by an urban or rural authority under the powers of this Act, and the penalties imposed by any such bye-laws may be recovered in a summary manner. **Appendix.**

XI. The Metropolitan Board or the sanitary authority may exercise all the powers given to them by the Metropolitan Open Spaces Act, 1881, or this Act respecting open spaces, churchyards, cemeteries, and burial grounds,(d) transferred to them in pursuance of the said Act or of this Act in respect of any open spaces, churchyards, cemeteries, and burial grounds of a similar nature which are or shall be vested in them in pursuance of any other statute, or of which they are otherwise the owners.(d) Power over open spaces already vested in sanitary authority.

XII. The Metropolitan Board may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever. Power of Metropolitan Board with respect to public walks or pleasure grounds.

XIII. [*Extension of Acts to Ireland.*]

XIV. This Act may be cited as the Open Spaces Act, 1887, and may be read with the principal Acts as one Act. Short title and construction.

SCHEDULE.

Portions of the Metropolitan Open Spaces Act, 1881, repealed.

In section one, the following words occurring in the definition of an "open space," viz., "but shall not include any enclosed land which has not a public road or footpath completely round the same."

In the same section, the following words occurring in the definition of a "burial ground," viz., "and in which interments have taken place since the year 1800."

In the second paragraph of section five, the words "but such metropolitan board, vestry, or district board shall not allow the playing of any games or sports therein."

THE PUBLIC WORKS LOANS ACT, 1887.

(50 & 51 VICT. CAP. 37.)(e)

An Act to grant money for the purpose of certain Local Loans; and for other purposes relating to Local Loans. [16th September, 1887.]

* * * * *

I. This Act may be cited as the Public Works Loans Act, 1887.

Short title.

* * * * *

IV. Whereas under section seven of the Public Works Loans Act, 1882,(f) provision may be made for enabling any rating authority as therein defined to charge any fund or rate under their control for the purpose of aiding a public body in raising a loan for the construction of a harbour, pier, or other similar works, and Power for certain local authorities to guarantee harbour loans, 45 & 46 Vict. c. 62.

(c) See these sections, *ante*, p. 256.

(d) See the definitions in section 1 of the Act of 1881, *ante*, p. 1110.

(e) As to the omission of the clause of enactment to this Act, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56). A list of the other Public Works Loans Acts will be found *ante*, p. 1028. The only section of the present Act which need be set out here is section 4. The rest of the Act relates to the grant of moneys by Parliament for the year and to purely local matters.

(f) See this section, *ante*, p. 1173.

Appendix. it is expedient to extend the provisions of that section to certain other rating authorities: Be it therefore enacted, that the expression "rating authority" as defined in that section shall include:—

(1) As regards England—

38 & 39 Vict.
c. 55.

(a.) Any authority being a rural sanitary authority under the Public Health Act, 1875, and the Acts amending the same; and

(b.) Any justices in quarter sessions assembled, and any representative county body which may be hereafter created by Act of Parliament.

* * * * *

THE ALLOTMENTS ACT, 1887.

(50 & 51 VICT. CAP. 48.)(a)

An Act to facilitate the provision of Allotments for the Labouring Classes.

[16th September, 1887.]

* * * * *

Short title.

I. This Act may be cited as the Allotments Act, 1887.

Duty of
sanitary autho-
rity to acquire
land for allot-
ments.

II. (1.) On a representation in writing to the sanitary authority of any urban or rural district by any six registered parliamentary electors^(b) or ratepayers^(c) resident, in the case of an urban district, in that district, and, in the case of a rural district, in some parish in that district, that the circumstances of the urban district or parish are such that it is the duty of the sanitary authority to take proceedings under this Act therein, the sanitary authority shall take such representation into consideration.

If the sanitary authority of any urban or rural district are of opinion, either after inquiry made in consequence of such representation or otherwise, that there is a demand for allotments for the labouring population in such urban district, or in any parish in such rural district, and that such allotments cannot be obtained at a reasonable rent^(d) and on reasonable conditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same, the sanitary authority, subject to the provisions of this Act, shall^(e) by purchase or hire acquire^(f) any suitable land which may be available, whether within or without their district or the said parish, adequate to provide a sufficient number of allotments, and shall let such land in allotments to persons belonging to the

(a) This Act is amended by 53 & 54 Vict. c. 65, *post*, and by 56 & 57 Vict. c. 73. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(b) By section 6 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), a parish council shall have the same power of making a representation with respect to allotments as is by this section conferred on parliamentary electors, but without prejudice to the powers of those electors.

(c) The Act contains no definition of a ratepayer. In a rural district it will mean a person assessed to the poor rate. In an urban district it may mean a person assessed to the poor rate or the general district rate; but as the same persons are or should be assessed to both rates, the difficulty is of little practical importance.

(d) The term "reasonable rent" is explained in the concluding paragraph of the section.

(e) Observe that this provision is imperative. The conditions are (1) that there is a demand, and (2) that suitable land cannot be obtained at a reasonable rent by voluntary arrangement.

(f) The land need not be within the district or parish. But it is evident that it should be in the immediate neighbourhood.

labouring population(*g*) resident in the said district or parish, and desiring to take the same.^(h) **Appendix.**

(2.) A sanitary authority shall not under this Act acquire land for allotments save at such price or rent that in the opinion of the sanitary authority all expenses, except such expenses as are incurred in making roads to be used by the public,⁽ⁱ⁾ incurred by the sanitary authority in acquiring the land and otherwise in relation to the allotments may reasonably be expected to be recouped out of the rents obtained in respect thereof.

For the purpose of this section the expression "reasonable rent" means the rent exclusive of rates, taxes, and tithe rentcharge which a person taking an allotment might reasonably be expected to pay, taking one year with another, to a landlord, having regard to the value of similar land in the neighbourhood, to the extent and situation of the allotment, to the expenses of adapting the land to the purposes of the allotment, and to the repairs and other outgoings payable by the landlord, and to the cost and risk of collecting the rents of, and otherwise managing allotments.^(k)

III. (1.) For the purposes of the purchase of land by agreement by a sanitary authority for allotments, section one hundred and seventy-eight of the Public Health Act, 1875, and the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions with respect to the purchase and taking of land otherwise than by agreement, and with respect to the provision to be made for affording access to the special Act.^(l)

Acquisition of land for purpose of Act.
38 & 39 Vict. c. 55.
8 & 9 Vict. c. 18.

(2.) If a sanitary authority are unable by hiring or purchase by agreement to acquire suitable land sufficient for allotments under this Act for any district or parish at a reasonable price or rent, and subject to reasonable conditions, such authority may petition the county authority^(m) of the county in which the district or parish is situate, and the county authority (after such inquiry and procedure as provided in the sections hereinafter incorporated in this Act) may make a provisional order authorizing the sanitary authority to put in force, as respects the land mentioned in the order, the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of land otherwise than by agreement.

(3.) The Local Government Board, on the application of any county authority,^(m) shall introduce into Parliament a bill confirming provisional orders made under this Act by such county authority, and the sanitary authority petitioning for the order shall be considered as the promoters of such order.

(4.) For the purpose of the purchase of land under this section otherwise than by agreement, sections one hundred and seventy-six,⁽ⁿ⁾ two hundred and ninety-six,

(*g*) Allotments are only to be provided for the labouring population. Section 6 enables the authority to make regulations defining the persons eligible to be tenants of allotments. They must, however, be resident in the district or parish. See section 8, sub-sect. (2), *post*.

(*h*) In the event of the sanitary authority failing to acquire land under this section, a petition by way of appeal to the county council may be presented under 53 & 54 Vict. c. 65, s. 2, *post*. The county council are in such a case to hold an inquiry, and if satisfied of the default of the sanitary authority, will resolve to that effect, and thereupon themselves execute the Act in the district or parish.

(*i*) Section 5, *post*, enables the sanitary authority to make roads.

(*k*) This definition is very similar to that of net annual value for rating purposes [see *ante*, p. 11]. But the rent must be something more than the net annual value, seeing that regard must be had to the expenses of adaptation, repairs, and costs of collection and arrangement.

(*l*) See the Public Health Act, 1875, s. 178, *ante*, p. 249. That section relates to land belonging to the Duchy of Lancaster. The Lands Clauses Acts are set out in this Appendix. See *ante*, p. 808. In parishes where there is a parish council, land may be acquired for allotments under section 9 of the Local Government Act, 1894, and the procedure under that section differs materially from that in the text. See the notes to that section, *ante*, p. 704.

(*m*) The county authority are now the county council, save in county boroughs. See the note to section 16, *post*.

(*n*) See this section, *ante*, p. 246.

Appendix. and two hundred and ninety-seven(*a*) of the Public Health Act, 1875, shall, so far as consistent with the tenour of this Act, be incorporated with this Act, and apply as if they were herein re-enacted, with the substitution of "the county authority" for "the Local Government Board," and of "any officer of the county authority appointed for the purpose of an inquiry" for "inspectors of the Local Government Board."

Provided that—

- (*a*.) Any question of disputed compensation shall be referred to the arbitration of a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator, then on the application of either of them, by the Local Government Board, and the remuneration to be paid to the arbitrator appointed by the Local Government Board shall be fixed by that Board :
- (*b*.) If an arbitrator appointed for the purposes of this Act dies or becomes incapable to act before he has made his award, or fails to make his award within two months after he is appointed, his appointment shall determine, and the determination of the compensation shall be referred to another arbitrator appointed in like manner as if no arbitrator had been previously appointed : Provided always, that the same arbitrator may be re-appointed :
- (*c*.) An arbitrator appointed under this section shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly ; and, further, the arbitrator, notwithstanding anything in the said Acts, shall determine the amount of the costs and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.
- (5.) In construing for the purposes of this section any section or Acts incorporated with this section, this Act, together with any Act confirming a provisional order under this section, shall be deemed to be the special Act, and the sanitary authority shall be deemed to be the local authority or the promoters of the undertaking, as the case requires, and the word "land" shall have the same meaning as in this Act.(*b*)
- (6.) Where land is purchased by a sanitary authority under this Act otherwise than by agreement, the following provisions shall apply :—
 - (*a*.) The county authority shall not make a provisional order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking :
 - (*b*.) The county authority shall, in making a provisional order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner and to the convenience of other property belonging to the same owner, and shall so far as is practicable avoid taking an undue or inconvenient quantity of land from any one owner.(*c*)
- (7.) For the purpose of the hiring of land by a sanitary authority for allotments, any person or body of persons or body corporate authorized to sell land to the sanitary authority for the purposes of this Act may, without prejudice to any other power of leasing, lease lands to the sanitary authority, without any fine or premium, for a term not exceeding thirty-five years.
- (8.) The county authority shall not make a provisional order for purchasing any right to coal or metalliferous ore.

(*a*) See these sections, *ante*, p. 390. They relate, as here applied, to the powers of the officers appointed to hold inquiries and to provisional orders.

(*b*) For the definition of "land," see section 17 of this Act, *post*.

(*c*) This provision will impose a duty upon the county authority to see that no inconvenient extent of land is taken from any one person.

IV. Where any Bill for confirming a provisional order made under this Act is referred to a committee of either House of Parliament upon the petition of any person opposing such Bill, the committee shall take into consideration the circumstances under which such opposition is made to the Bill, and whether such opposition was or was not justified by the circumstances, and shall(*d*) award costs accordingly to be paid by the promoters or the opponents of the Bill as the committee may think just.

Appendix.

Costs to be awarded in certain cases.

Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the twenty-eighth and twenty-ninth Victoria, chapter twenty-seven.(*e*)

28 & 29 Vict. c. 27.

The decision of the majority of the members of the committee for the time being present and voting on any question under this section shall be deemed to be the decision of the committee.

V. The sanitary authority(*f*) may improve any land acquired by them under this Act, and adapt the same for letting in allotments, by draining, fencing, and dividing the same, acquiring approaches, making roads, and otherwise, as they think fit, and may from time to time do such things as may be necessary for maintaining such drains, fences, approaches, and roads, or otherwise, for maintaining the allotments in a proper condition.(*g*)

Improvement and adaptation of land for allotments.

VI. (1.) Subject to the provisions of this Act, the sanitary authority(*f*) may from time to time make, revoke, and vary such regulations as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for carrying the provisions of this Act into effect; and such regulations may define the persons eligible to be tenants of such allotments,(*h*) and the notices to be given for the letting thereof, and the size of the allotments, and the conditions under which they are to be cultivated, and the rent to be paid for them. Provided that all such regulations shall make provision for reasonable notice to be given to a tenant of any allotment for the determination of his tenancy. Provided also, that all regulations made under this section shall not be of any force unless and until they have been confirmed by the Local Government Board, in like manner and subject to the like provisions as in the case of bye-laws under the Public Health Act, 1875.(*i*)

Management of allotments.

38 & 39 Vict. c. 55.

(2.) All regulations for the time being in force under this section shall be binding on all persons whatsoever; and the sanitary authority shall cause them to be from time to time made known, in such a manner as the sanitary authority think fit, to all persons interested, and shall cause a copy thereof to be given gratis to any inhabitant(*k*) of the district or parish demanding the same.

(3.) Subject to the provisions of this Act the sanitary authority(*f*) may from time to time appoint, and when appointed, remove allotment managers of land acquired under this Act for allotments, and such allotment managers shall consist either partly of members of such authority and partly of other persons, or wholly of other persons, so that in either case such other persons be persons residing in the locality and contributing to the rate out of which the expenses under this Act are paid.(*l*)

(*d*) This provision is imperative. Costs must be given to one party or the other.

(*e*) This is now called the Parliamentary Costs Act, 1865. See also 34 & 35 Vict. c. 83.

(*f*) This expression will include the parish council when land is assured to them under the Local Government Act, 1894, s. 9, sub-sect. (14), *ante*, p. 709.

(*g*) These improvements, except the making of public roads, have to be taken into account under section 2 (2), *ante*, in estimating whether the sanitary authority can provide allotments without loss.

(*h*) The persons eligible must belong to the labouring population. See note (*g*), *ante*, p. 1217; but see also section 7 (4), *post*.

(*i*) See the Public Health Act, 1875, s. 184, *ante*, p. 257. The Local Government Board have issued model regulations under this section, dated 30th May, 1888, which are set out in Appendix II. *post*.

(*k*) An inhabitant need not be a ratepayer.

(*l*) The qualification of managers is twofold. They must be resident. In an urban district they must be rated to the general district rate. In a rural district they must be rated to the special rate out of which the expenses of providing the allotments is paid. See section 10, *post*. For the disqualification of managers, see section 9, sub-sect. 10, *post*.

Appendix.

(4.) The proceedings and powers of allotment managers shall be such as, subject to the provisions of this Act, may be prescribed from time to time by the sanitary authority; (a) the allotment managers may be empowered by the sanitary authority to do anything in relation to the management of such allotments which the sanitary authority are authorised to do, and to incur expenses to such amount as the sanitary authority prescribe, and any expenses properly so incurred shall be deemed to be expenses of the sanitary authority under this Act.

Provisions as to
letting and use
of allotments.

VII. (1.) The rents of the allotments shall be fixed at an amount not less than such as may reasonably be expected to ensure the sanitary authority from loss; (b) but in calculating such loss any expenses incurred in an unsuccessful attempt to acquire land for allotments shall be excluded and, subject as aforesaid, such rents may be from time to time charged as are reasonable, having regard to the agricultural value of the land, and not more than a quarter's rent shall be required to be paid in advance in any case where it is deemed necessary by the sanitary authority to require the payment of rent in advance.

(2.) The sanitary authority (a) shall, for the purposes of all rates, taxes, and tithe rent-charge be deemed to be the occupiers of the allotments which are let, (c) but they shall cause the sums from time to time paid by way of rates, taxes, and tithe rent-charge in respect of the allotments to be apportioned among them, and cause the sum so apportioned in respect of each allotment to be certified to the tenant thereof, and such sum shall be added to the rent otherwise payable by the said tenant in respect of such allotment, and shall be deemed to be part of such rent, and be recoverable accordingly; (d) Provided always, that for the purposes of the parliamentary franchise, and the municipal and all other local franchises, the tenants shall be deemed to be the occupiers, and such rates to have been paid by them, notwithstanding the provisions hereinbefore contained.

(3.) One person shall not hold any allotment or allotments acquired under this Act exceeding one acre, and an allotment shall not be sub-let.

(4.) Provided that if at any time any allotment cannot be let in accordance with the provisions of this Act and the regulations, the same may be let to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the sanitary authority to resume possession thereof within a period not exceeding twelve months if it should at any time be required to be let under the provisions aforesaid.

(5.) No building other than a toolhouse, shed, greenhouse, fowlhouse, or pigsty shall be erected on any part of any allotment, and if any building other than as aforesaid is so erected the sanitary authority shall (e) forthwith pull down such building, and sell and dispose of the materials thereof, and the proceeds of the sale shall be applicable in like manner as the rent of the allotment. (f) If any building so allowed to be erected is erected upon an allotment, then at the end of the tenancy neither the sanitary authority nor the incoming tenant shall be bound to take any such building or pay any compensation therefor, (g) but the outgoing tenant shall be at liberty, before the expiration of his tenancy, to remove the same, and, if he fails so to do, the sanitary authority may pull down the building and dispose of the materials, and apply the proceeds in like manner as if it were a building prohibited to be erected.

(6.) A tenant of an allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him, for which he has no claim for compensation. (h)

(a) See note (f), *ante*, p. 1219.

(b) The local authority must in fixing the rents take into account the cost of actually providing the allotments which they seek to let, the cost of the land, and the cost of the improvements effected under section 5, *ante*.

(c) The sanitary authorities must pay the rates, &c., in the first instance.

(d) The rent, plus this addition, may be recovered under section 10, *post*.

(e) Observe that the local authority have no discretion in this matter.

(f) That is to say, the sanitary authority will retain the proceeds.

(g) But for this provision the tenant would have been entitled to compensation under 50 & 51 Vict. c. 26, s. 5, *ante*, p. 1205.

(h) Under 50 & 51 Vict. c. 26, s. 5, *ante*, p. 1205, the tenant is entitled to compensation

Appendix.

Recovery of
rent and
possession of
allotments.

VIII. (1.) The rent for an allotment let in pursuance of this Act, and the possession of such allotment in the case of any notice to quit, or failure to deliver up possession of the same as required by law, may be recovered by the sanitary authority⁽ⁱ⁾ as landlords, in the like manner as in any other case of landlord and tenant.^(k)

(2.) If the rent for any allotment is in arrear for not less than forty days, or if it appears to the sanitary authority that the tenant of an allotment not less than three months after the commencement of the tenancy thereof has not duly observed the regulations affecting such allotment made by or in pursuance of this Act, or is resident more than one mile out of the district or parish for which the allotments are provided, the sanitary authority may serve upon the tenant, or if he is residing out of the district or parish, leave at his last known place of abode in the district or parish, or fix in some conspicuous manner on the allotment,^(l) a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon such tenancy shall be determined accordingly: Provided that in every such case the sanitary authority in default of agreement between the incoming and outgoing tenant shall on demand^(m) pay to the tenant whose tenancy is so determined any compensation due to him as an outgoing tenant; and such compensation shall be assessed by an arbitrator appointed by the sanitary authority, or, if the tenant so elect, either by an arbitrator appointed under the Allotment and Cottage Gardens Compensation for Crops Act, 1887,⁽ⁿ⁾ or by a reference under the Agricultural Holdings (England) Act, 1883.

50 & 51 Vict.
c. 26.
46 & 47 Vict.
c. 61.

(3.) Upon the recovery of an allotment from any tenant, the court or justice directing the recovery may stay delivery of possession until payment of the compensation, if any, due to the outgoing tenant has been made or secured to the satisfaction of the court or justice.^(o)

IX. (1.) Where allotments have been provided under this Act for a parish in any rural district,^(p) a petition to the sanitary authority may be presented by a number of the electors of allotment managers in such parish, not being less than one-sixth of the whole number of such electors,^(q) praying for the election of allotment managers in such parish, and thereupon the sanitary authority shall order such election, and the allotment managers so elected shall be the allotment managers of the allotments in such parish in lieu of allotment managers appointed by the sanitary authority, who, on an election under this Act, shall cease to hold office.^(r)

Election of
allotment
managers.

(2.) The first election shall be held on such day as may, subject to the regulations hereafter mentioned, be fixed by the said authority.

(3.) The number of allotment managers in each case shall be such (not being less than three or more than five) as the sanitary authority may fix, and the quorum shall be three, or, if the number of managers is less than five, be two.

for fruit trees and fruit bushes planted with the written consent of the local authority. This provision enables him to remove other trees or bushes, or fruit trees and bushes planted without consent.

(i) See note (f), *ante*, p. 1219.

(k) This provision will enable the local authority to distrain for rent. Possession may be recovered in the ordinary way by action, and also by proceedings before justices under 1 & 2 Vict. c. 74. See section 2, *ante*. It would appear that the tenant must be resident when the allotment is let to him, though he may afterwards reside within a mile of the district or parish.

(l) This service must be personal if the tenant resides in the district or parish.

(m) This can only refer to agreed compensation. If it has to be determined it cannot be paid on demand.

(n) See this Act, *ante*, p. 1204.

(o) See note (k), *supra*.

(p) Observe that this provision does not apply in an urban district. If there is a parish council for the parish the powers and duties of allotment managers shall be exercised and performed by the parish council, and it shall not be necessary to hold an election of allotment managers. 56 & 57 Vict. c. 73, s. 6 (4).

(q) Or by the parish council, but without prejudice to the powers of the electors (56 & 57 Vict. c. 73, s. 6 (3)). The electors are described in sub-sect. (7), *post*.

(r) An election of managers will not alter the powers and duties of the managers; these will still be prescribed by the rural authority under section 6 (4), *ante*.

Appendix.

(4.) The allotment managers shall retire triennially on such day as may be prescribed by the regulations hereinafter mentioned,^(a) and the allotment managers first elected shall retire on the day for retirement which occurs next after the expiration of three years after the day fixed for their election.

(5.) Any casual vacancy among the allotment managers which occurs by death, resignation, disqualification, or otherwise may, if there remains a quorum of allotment managers, be filled up by such managers, but the person elected to fill the vacancy shall hold office only for the same time as the vacating manager would have done.

(6.) If at any time by reason of a failure of election, either by electors or allotment managers, or of any other cause, there is no allotment manager, or no quorum of allotment managers in any parish, the sanitary authority shall appoint allotment managers under this Act in that parish, and shall continue to appoint the same until another petition for the election of allotment managers is presented under this section.

(7.) The electors of allotment managers shall be the parliamentary electors in the parish, that is to say, the persons registered in any list of parliamentary electors for the parish as entitled to vote at an election of a member to serve in Parliament, and an elector shall not give more than one vote for any candidate nor vote for more candidates than the number to be elected.^(b)

(8.) The election of allotment managers shall be held at such time, and in such manner, and in accordance with such regulations^(c) as the Local Government Board may from time to time by order prescribe; and the Local Government Board may make regulations respecting the duties of the returning officer, and the expenses of the election, and may do and make regulations respecting all such things as appear to them necessary or proper for carrying into effect this section, whether preliminary or incidental to such election, and for applying to such election any enactments respecting offences at the election of guardians,^(d) and may revoke or alter any previous order under this section: Provided as follows:—

(a.) Such guardian or overseer of the parish, or other person as the sanitary authority may appoint, shall be the returning officer;

(b.) A poll, if demanded, shall be taken by ballot, and the said regulations shall provide for the application to such poll of the Ballot Act, 1872, including the provisions for punishing offences;

(c.) The poll shall be held on one day only, and shall close at eight o'clock in the evening, and shall be open for at least the period from five to eight o'clock in the evening;^(e)

(d.) The returning officer shall not vote except in the case of an equality of votes between any candidates, in which case he shall have a casting vote;

(e.) Any ballot boxes, instruments, fittings, and compartments provided by any public authority for parliamentary, municipal, or school board elections, or belonging to any public authority for the purpose of elections, shall be lent to the returning officer on his request for the purpose of an election of allotment managers, under such conditions and either free of charge or for such reasonable charge as may be prescribed by regulations under this section;^(f)

(f.) The returning officer may, except during ordinary school hours, use free of charge for the purpose of an election under this section any room in a

(a) See sub-sect. (8), *post*.

(b) This is a novel provision. The electors will not be the same body as those electing the district councillors, who will be the persons registered in the local government register of electors as well as in the parliamentary register.

(c) These regulations have not yet been published.

(d) Therefore all or any of the sections of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, *ante*, p. 1177, may be applied to an election of managers.

(e) The poll need not be open before five o'clock.

(f) It is presumed that some regulation will be made as to payment for damage done to the boxes, &c., thus lent.

school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any rate in the parish, but he shall make good any damage done to the room, and defray any expense incurred by the person or body of persons, corporate or incorporate, having control over the room, on account of its being so used.

Appendix.

(9.) An election under this section shall not be questioned except in such manner as may be prescribed by regulations under this section and the regulations may apply to such election any enactments respecting the questioning of an election of guardians.(g)

(10.) If an allotment manager is punished with imprisonment for any crime,(h) or is adjudged a bankrupt, or enters into a composition or arrangement with his creditors, or ceases to reside in, or in the neighbourhood of,(i) the parish, or absents himself for twelve months from all meetings of the allotment managers, except for temporary illness or other cause, to be approved by such managers, or is a tenant of any allotment under the management of the managers, he shall cease to be an allotment manager, and his office shall be vacant, and a person who, if elected, would by virtue of this enactment cease, otherwise than by reason of absence from meetings, to be a manager, shall not be qualified to be elected a manager, but, save as aforesaid, any retiring manager shall be eligible for re-election.

X. (1.) All expenses incurred by a sanitary authority under this Act, including allowances to officers of such authority for duties under this Act, shall be defrayed—

Expenses and receipts.

(a.) In the case of an urban sanitary authority as part of the general expenses of their execution of the Public Health Act, 1875;(k) and

38 & 39 Vict. c. 55.

(b.) In the case of a rural sanitary authority as special expenses(l) incurred in the execution of the Public Health Act, 1875, and such expenses shall be charged to the parish on account of which the land was acquired.

(2.) Section two hundred and ninety-eight of the Public Health Act, 1875,(m) with respect to costs of provisional orders, shall apply to costs incurred by a sanitary authority in relation to provisional orders under this Act.

(3.) All sums received by a sanitary authority in respect of any land under this Act, otherwise than from any sale or exchange, shall be applied in aid of the expenses incurred by them in respect of such land, and so far as they are not required for the payment of those expenses, shall be applied in aid of the general and special expenses above in this section mentioned, and in the case of a rural authority shall be credited to the parish on account of which the land was acquired.

(4.) The sanitary authority may borrow for the purposes of acquiring, improving, and adapting land under this Act in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general and special expenses; and all sums payable by the sanitary authority in respect of principal or of interest on any money so borrowed shall be defrayed in manner provided by this section respecting expenses incurred under this Act in respect of such land.

(5.) Sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875, relating to borrowing by a local authority,(n) and sections

38 & 39 Vict. c. 55.

(g) The Local Government Board may therefore apply the provisions of 5 & 6 Vict. c. 57, s. 8, which enables them to decide any question of disputed election, or they may apply the provisions of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ante, p. 1177, which enables any person to contest the validity of an election by means of an election petition.

(h) This will include a summary conviction. See *Conybeare v. School Board for London* [1891], 1 Q. B. 118; 60 L. J. Q. B. 44; 63 L. T. (N.S.) 651; 39 W. R. 288; 55 J. P. 151.

(i) By section 6 (3), ante, a manager must be resident in the parish. But if so qualified when elected, he is not to be disqualified if he ceases to be resident, provided he still resides in the neighbourhood.

(k) See the Public Health Act, 1875, s. 207, ante, p. 276.

(l) See the Public Health Act, 1875, s. 229, ante, p. 308.

(m) See this section, ante, p. 393.

(n) See these sections, ante, p. 314.

Appendix.

two hundred and forty-two and two hundred and forty-three of the same Act,^(a) relating to loans by the Public Works Loan Commissioners to a local authority, shall apply to a loan for the purposes of this Act to a sanitary authority in like manner as if they were herein re-enacted and in terms made applicable thereto.

(6.) Separate accounts shall be kept of the receipts and expenditure under this Act of the sanitary authority and their officers and of allotment managers and other persons acting under this Act, and such accounts shall be audited in like manner, and with the like incidents and consequences as the accounts of the other receipts and expenditure of the sanitary authority and their officers under the Public Health Act, 1875,^(b) and in the case of allotment managers and other persons as the accounts of officers of the sanitary authority.^(c)

Sale of superfluous or unsuitable land.

XI. (1.) Where the sanitary authority are of opinion that any land acquired by them in pursuance of this Act or any part thereof is no longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available, they may, with the sanction of the county authority,^(d) sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(2.) The proceeds of a sale under this section and any money received by the sanitary authority on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the sanitary authority in respect of the land acquired under this Act, or in acquiring, adapting, and improving other lands for allotments under this Act, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable: Provided that any such proceeds, surplus, interest, and money shall, in the case of a rural sanitary district, be credited to or applied for the benefit of the parish for which the land was purchased.

(3.) Sections one hundred and twenty-eight to one hundred and thirty-two (both inclusive) of the Lands Clauses Consolidation Act, 1845 (relating to the rights of pre-emption of superfluous lands,^(e) shall apply upon any sale by a sanitary authority in pursuance of this section of any land, whether because it is no longer needed for the purpose of allotments, or because other land more suitable for the purpose is available, but save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not be deemed to be incorporated in this Act, or in any provisional order made under this Act.

Power to make scheme for provision of common pasture.

XII. Where it appears to any sanitary authority that, as regards their district, if urban, or any parish in their district, if rural, land can be acquired for affording common pasture at such price or rent that all expenses incurred by the sanitary authority in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the labouring population, such sanitary authority may submit to the county authority^(f) for the county in which the district or parish is wholly or partly situate a scheme for providing such common pasture, and the county authority, if satisfied of the expediency of such scheme, may by order^(g) authorise the

(a) See these sections, *ante*, p. 323.

(b) See the provisions of the Public Health Act, 1875, as to the audit of accounts, *ante*, p. 326.

(c) See the Public Health Act, 1875, s. 250, *ante*, p. 332.

(d) That is, the county council. See section 16, *post*.

(e) See these sections, *ante*, p. 838. The owner from whom the land has been acquired in the first instance will thus have the pre-emption.

(f) See section 16, *post*.

(g) Upon obtaining this order the local authority may proceed to acquire land for common pasture in the same way as they can acquire land for allotments under the Act. In section 9 of the Local Government Act, 1894, the expression "allotments" includes

sanitary authority to carry it into effect, and upon such order being made this Act shall, with the necessary modifications, apply in like manner as if "allotments" in this Act included common pasture, and "rent" included a charge for turning out an animal. Appendix.

Provided that the regulations made under this Act^(h) may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

XIII. (1.) The allotment wardens under the Inclosure Act, 1845, and the Acts amending the same,⁽ⁱ⁾ having the management of any land appropriated under the said Acts, either before or after the passing of this Act for allotments or field gardens for the labouring poor of any place, may by agreement with any sanitary authority within whose district such place is wholly or partly situate, transfer the management of such land to the sanitary authority, upon such terms and conditions as may be agreed on with the sanction, as regards the said allotment wardens, of the Land Commissioners for England,^(k) and thereupon such land shall vest in the sanitary authority. Power for allotment wardens or allotment trustees to transfer to sanitary authority. 8 & 9 Vict. c. 118.

(2.) All trustees within the meaning of the Allotments Extension Act, 1882,⁽ⁱ⁾ required or authorized by that or any other Act to let lands in allotments to cottagers, labourers, journeymen, or others in any place may, if they think fit, in lieu of letting such land in manner provided by the said Acts, sell or let such land to the sanitary authority of the district in which such place is wholly or partly situate, upon such terms as may be agreed upon, with the sanction, as regards the said trustees, of the Charity Commissioners for England and Wales. 45 & 46 Vict. c. 80.

(3.) The provisions of this Act shall apply to land vested in the sanitary authority under this section, in like manner as if it had been acquired by the sanitary authority under the general powers of this Act.

XIV. (1.) If expenses under this Act are incurred in respect of two or more parishes, such expenses shall be apportioned among those parishes in like manner and subject to the like provisions as special expenses incurred for the common benefit of two or more contributory places under the Public Health Act, 1875, may be apportioned.^(l) As to combination of parishes and contributory places.

(2.) Where in a rural district any area other than a parish^(m) is a contributory place for the purposes of the Public Health Act, 1875, this Act shall apply to such contributory place as if it were a parish, and the expression "parish" in this Act shall not include any parish wholly or partly within such contributory place,⁽ⁿ⁾ and the parliamentary electors for the contributory place shall be the persons registered in any list of parliamentary electors for any parish wholly in such contributory place, or for any parish partly therein, if registered in respect of any qualification situate in such contributory place.

(3.) Where a district or parish forms part of more than one county, it shall be deemed for the purposes of this Act to be situate wholly in that county which comprised, according to the last published census for the time being, the largest portion of the population of such district or parish, and where such population is not specified in such census, then in the county in which the largest part of the area of such district or parish is situate, and any doubt which may arise under this section as to the county shall be determined by the Local Government Board.

common pasture where authorized to be acquired under this section. See sub-sect. (16) of that section, *ante*, p. 709.

(h) See section 6, *ante*.

(i) Or in a parish where there is a parish council, the parish council. See 56 & 57 Vict. c. 73, s. 6 (4).

(k) Now the Board of Agriculture. See 52 & 53 Vict. c. 30.

(l) This apportionment is provided for by section 229 of the Public Health Act, 1875, *ante*, p. 308.

(m) *e.g.*, a special drainage district, or a part of a parish excluded from a special drainage district, or from an urban district.

(n) In other words, the Act is only to apply to contributory places in rural districts.

Appendix.

Two or more parishes immediately adjoining each other may make a representation under this Act, and a sanitary authority of a rural district may take proceedings in respect of such parishes as if they were a single parish.

Register of tenancies.

XV. The sanitary authority shall cause a register to be kept showing the particulars of the tenancy, acreage, and rent of every allotment let, and of the unlet allotments, and such register shall be open to the examination of ratepayers in the urban district or the parish for which the allotments have been provided, in such manner as may be prescribed by the regulations made under this Act by the sanitary authority, and any ratepayer of such district or parish, without paying any fee, may take copies of or extracts from such register, and within one month after the twenty-fifth day of March in every year shall cause an annual statement showing their receipts and expenditure under this Act in respect of the year ending on that day, and their liabilities outstanding on that day, to be deposited at some convenient place in the district, if urban, or the parish to which the statement relates if the district is rural, and any ratepayer may without fee inspect and take copies of such statement.

Definition of county authority.

XVI. For the purposes of this Act "county authority" shall be any representative body elected by the inhabitants of the county which may be established under any Act of any future session of Parliament, and until such representative body is established the powers and duties of the county authority under this Act shall be exercised and performed by the Local Government Board, and the provisions of this Act and of the enactments incorporated with this Act shall accordingly be construed with the necessary modification.(a)

Definitions.

XVII. In this Act, unless the context otherwise requires—

The expression "allotment" includes a field garden.

The expressions "urban district" and "rural district" mean respectively an urban and rural sanitary district within the meaning of the Public Health Act, 1875.(b)

The expression "sanitary authority" means the urban sanitary authority of an urban sanitary district and the rural sanitary authority of a rural sanitary district within the meaning of the Public Health Act, 1875.(b)

The expression "land" includes pasture, arable, and other land, and any right of way or easement.

Extent of Act.

XVII. This Act shall not apply to Scotland or Ireland.

THE COAL MINES REGULATION ACT, 1887.

(50 & 51 VICT. CAP. 58.)(c)

An Act to consolidate with Amendments the Coal Mines Acts, 1872 and 1886, and the Stratified Ironstone Mines (Gunpowder) Act, 1881.

[16th September, 1887.]

35 & 36 Vict.
c. 76.
49 & 50 Vict.
c. 40.
44 & 45 Vict.
c. 26.

WHEREAS it is expedient to repeal and re-enact with amendments the Coal Mines Acts, 1872 and 1886, and the Stratified Ironstone Mines (Gunpowder) Act, 1881:

* * * * *

Preliminary.

Short title.

I. This Act may be cited as the Coal Mines Regulation Act, 1887.

(a) Since the Local Government Act, 1888, came into operation, the county council are the county authority. In county boroughs, however, the powers and duties of the county authority are to continue to be exercised and performed by the Local Government Board. See section 34 (7) of that Act, *ante*, p. 508; and see also sect. 9 (18) of the Local Government Act, 1894, *ante*, p. 709.

(b) See the Public Health Act, 1875, s. 5, *ante*, p. 24.

(c) The provisions of this Act set out below are practically identical with those of 35 & 36 Vict. c. 77, *ante*, p. 999. Reference should be made to the cases cited in the notes in that page.

II. This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-eight, which date is in this Act referred to as the commencement of this Act. **Appendix.**
Commencement of Act.

III. This Act shall apply to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act, unless the context otherwise requires, the word "mine" means a mine to which this Act applies. **Application of Act.**

* * * * *

XXXVII. (1.) Where any mine(*d*) is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred, the owner(*d*) thereof, and every other person interested in the minerals of the mine, shall cause the top of every shaft and every side entrance from the surface to be and to be kept securely fenced for the prevention of accidents: **Fencing in case of abandoned mine.**

Provided that—

(i.) Subject to any contract to the contrary, the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs, charges and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect:

(ii.) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

(2.) If any person fails to act in conformity with this section, he shall be guilty of an offence against this Act.(*e*)

(3.) No person shall be precluded by any agreement from doing, or be liable under any contract to any damages penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of this section.

(4.) If any occupier of land or other person wilfully obstructs the owner of a mine or other person interested as aforesaid in doing any such acts he shall be guilty of an offence against this Act.

(5.) Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort(*f*) or is in open or uninclosed land, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875.(*g*) **38 & 39 Vict. c. 55.**

* * * * *

LXXIV. Section thirty-eight of the Public Health Act, 1875,(*h*) (which relates to privy accommodation for any house used as a factory or building in which both sexes are employed) shall apply to the portions of a mine which are above ground, and in which girls and women are employed, in like manner as if it were herein re-enacted with the substitution of "those portions of the mine" for the house in the said section mentioned. **Application of 38 & 39 Vict. c. 55, s. 38.**

LXXV. In this Act, unless the context otherwise requires,—

"Mine" includes every shaft in the course of being sunk; and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, **Interpretation of terms.**

(*d*) See the definition of these terms in section 75, *post*.

(*e*) The penalty for offences against this Act is prescribed by section 59. It is not to exceed, in the case of an owner, agent, manager, or under-manager, 20*l*.; and in the case of any other person, 2*l*. If an inspector has given written notice of such offence there is a further penalty not exceeding 1*l*. per day while the offence is continued.

(*f*) For the effect of this provision see the Quarry (Fencing) Act, 1887, *ante*, p. 1202, and note (*a*) to that Act. It should be observed that a place of public resort under that Act must be dedicated to the public. Here there is no such provision.

(*g*) See this section, *ante*, p. 108.

(*h*) See this section, *ante*, p. 65. See also 53 & 54 Vict. c. 59, s. 22, *ante*, p. 577. In places where section 22 of the Public Health Acts Amendment Act, 1890 (*ante*, p. 577), is not in force, section 38 of the Public Health Act, 1875, is superseded by section 35 of the Factory and Workshop Act, 1895, *post*.

Appendix.

works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine :

“Shaft” includes pit :

“Plan” includes a correct copy or tracing of any original plan :

“Owner,” when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability.

THE LOCAL AUTHORITIES (EXPENSES) ACT, 1887.

(50 & 51 VICT. CAP. 72.)

An Act to amend the Law relating to Expenses of Local Authorities.

[16th September, 1887.]

* * * * *

Short title.

I. This Act may be cited as the Local Authorities (Expenses) Act, 1887.

Definitions.

II. In this Act—

38 & 39 Vict.
c. 53.

The expression “local authority” has the same meaning as in the Local Loans Act, 1875.(a)

42 & 43 Vict.
c. 6.

The expression “district auditor” has the same meaning as in the District Auditors Act, 1879.(b)

Limitation on
power of dis-
trict auditor.

III. Expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board.(c)

THE ELECTRIC LIGHTING ACT, 1888.

(51 & 52 VICT. CAP. 12.)(d)

An Act to amend the Electric Lighting Act, 1882.

[28th June, 1888.]

* * * * *

Consent of
local authority
generally re-
quired to pro-
visional order
for supply of
electricity.

I. Notwithstanding anything in the Electric Lighting Act, 1882, no provisional order authorizing the supply of electricity by any undertakers within the district of any local authority shall be granted by the Board of Trade, except with the

(a) See the definition of “local authority” in the 38 & 39 Vict. c. 53, s. 34, *ante*, p. 1026. The term includes sanitary authorities.

(b) See this Act, *ante*, p. 1101.

(c) The effect of this provision is to enable the Local Government Board to sanction expenses which would otherwise be disallowed by the auditor, without waiting until disallowance and then remitting the surcharge on appeal.

(d) This Act amends the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), *ante*, p. 1158. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

consent of such local authority, unless the Board of Trade, in any case in which the consent of such local authority is refused, are of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent. The grant of authority to any undertakers to supply electricity within any area, whether granted by license or by means of a provisional order, shall not in any way hinder or restrict the granting of a license or provisional order to the local authority, or to any other company or person within the same area.(e)

Appendix.

II. Section twenty-seven of the Electric Lighting Act, 1882, is hereby repealed, and in lieu thereof, the following provisions shall have effect; (that is to say,)

Repeal of
45 & 46 Vict.
c. 56, s. 27.

Where any undertakers are authorized by a provisional order or special Act to supply electricity within any area, any local authority within whose jurisdiction such area, or any part thereof, is situated may, within six months after the expiration of a period of forty-two years,(f) or such shorter period as is specified in that behalf in the provisional order or in the special Act, from the date of the passing of the Act confirming such provisional order, or of such special Act, and within six months after the expiration of every subsequent period of ten years,(g) or such shorter period as is specified in that behalf in the provisional order, or in the special Act, by notice in writing, require such undertakers to sell, and thereupon such undertakers shall sell to them their undertaking, or so much of the same as is within such jurisdiction, upon terms of paying the then value of all lands, buildings, works, materials, and plant of such undertakers, suitable to and used by them for the purposes of their undertaking within such jurisdiction, such value to be, in case of difference, determined by arbitration: Provided that the value of such lands, buildings, works, materials, and plant shall be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working,(h) and to the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance; but without any addition in respect of compulsory purchase, or of goodwill, or of any profits which may or might have been or be made from the undertaking, or of any similar considerations. The Board of Trade may determine any other questions which may arise in relation to such purchase, and may fix the date from which such purchase is to take effect, and from and after the date so fixed, or such other date as may be agreed upon between the parties, all lands, buildings, works, materials, and plant so purchased as aforesaid shall vest in the local authority which has made the purchase, freed from any debts, mortgages, or similar obligations of such undertakers, or attaching to the undertaking, and the powers of such undertakers in relation to the supply of electricity under this Act, or such provisional order, or special Act as aforesaid, within such area or part thereof as aforesaid shall absolutely cease and determine, and shall vest in the local authority aforesaid.

Purchase of
undertaking
by local authority.

(e) The first part of this section amends section 4 of the Act of 1882, which enabled the Board of Trade to authorize any local authority, company, or person to supply electricity within any area without requiring such consents as are required to the granting of a license. These consents are enumerated in section 3 of the Act of 1882, and included the consent of the local authority; but the consent of the local authority will now be necessary in every case, unless dispensed with by the Board of Trade for special reasons. The local authority are the urban sanitary authority. See the schedule to the Act of 1882, and section 4 (5), *post*. The latter part of the section provides, in effect, that a license or provisional order shall not confer a monopoly to supply electricity.

(f) In the repealed section, this period was 21 years.

(g) In the repealed section this period was seven years.

(h) These words from "and to the circumstance" are new.

Appendix.

Power to vary terms of sale contained in last section.

Restrictions as to placing of electric lines, &c.

III. Notwithstanding anything in the last preceding section contained, the Board of Trade may, by any provisional order to be made by them under the Electric Lighting Act, 1882, if they think fit, vary the terms upon which any local authority may require the undertakers to sell, and upon which the undertakers shall be required to sell to such local authority their undertaking, or so much of the same as is within the jurisdiction of such local authority under the said section, in such manner as may have been agreed upon between such local authority and the undertakers.

IV. (1.) Where in any case an electric line or other work may have been laid down or erected in, over, along, across, or under any street, for the purpose of supplying electricity, or may have been laid down or erected in any other position for such purpose, in such a manner as not to be entirely enclosed within any building or buildings, or where any electric line or work so laid down or erected may be used for such purpose otherwise than under and subject to the provisions of a license, order, or special Act, the Board of Trade, if they think fit, may, by notice in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, to be served upon the body or person owning or using or entitled to use such electric line or work, require that such electric line or work shall be continued and used only in accordance with such conditions, and subject to such regulations for the protection of the public safety, and of the electric lines and works of the Postmaster-General, and of other electric lines and works lawfully placed in any position and used for telegraphic communication, (a) as the Board of Trade may, by or in pursuance of such notice, prescribe, and in case of non-compliance with the said regulations, then the Board of Trade may require such body or person to remove such electric line or work: Provided that nothing in this sub-section shall apply to any electric line or work laid down or erected by any body or person for the supply of electricity generated upon any premises occupied by such body or person to any other part of such premises. (b)

(2.) Where in any case any electric line or work is used for the supply of electricity in such a manner as to injuriously affect any telegraphic line of the Postmaster-General, or to affect the telegraphic communication through any such line, the Postmaster-General may, by notice to be served upon the body or person owning or using or entitled to use such electric line or work, require that such supply be continued only in accordance with such conditions and regulations for the protection of the telegraphic lines of the Postmaster-General, and the telegraphic communication through the same, as he may, by or in pursuance of such notice, prescribe, and in default of compliance with such conditions and regulations, the Postmaster-General may require that the supply of electricity through such electric line or work shall be forthwith discontinued: Provided that nothing in this sub-section shall apply to the supply of electricity through any electric line or work laid down or erected under and subject to the provisions of any license, order, or special Act, or which may be used in accordance with any conditions or regulations prescribed by the Board of Trade, by or in pursuance of any notice given by them under this section.

(3.) If any body or person fails to comply with the requirements of any notice which may be served upon them or him under this section, such body or person shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recovered summarily, and any court of summary jurisdiction on complaint made may make an order directing and authorizing the removal of any electric line or work specified in such notice by such person and upon such terms as they may think fit.

(4.) Any notice authorized to be served under this section upon any body or person, may be served by the same being addressed to such body or person, and being left at or transmitted through the post to any office of such body, or the

(a) As to electric trams, see *National Telephone Company v. Baker*, ante, p. 1164.

(b) This sub-section appears to be limited in its application to wires laid down by any company or person without statutory authority. The Board of Trade have made regulations under it, and these regulations follow the present Act in this Work. The wires to which this sub-section relates would, apparently, be subject to Part II. of the Public Health Acts Amendment Act, 1890, ante, p. 567.

usual or last known place of abode of such person; and any notice so served by post shall be deemed to have been served at the time when the letter containing the notice would be delivered in the usual course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

(5.) In this section, terms and expressions to which, by the Electric Lighting Act, 1882, meanings are assigned, shall have the same respective meanings, provided that the term "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place whatever, and the expression "telegraphic line" shall have the meaning assigned to it by the Telegraph Act, 1878.^(c) 45 & 46 Vict. c. 56.

(6.) Nothing in this section shall apply to any electric line or work of the Postmaster-General, or to any other electric line or work used or to be used solely for telegraphic purposes, except by way of protection, as in this section provided.

V. This Act may be cited as the Electric Lighting Act, 1888; and the Electric Lighting Act, 1882, and this Act shall be read and construed together as one Act, and may be cited together for all purposes as the Electric Lighting Acts, 1882 and 1888. Short title.

* * * * *

THE FOLLOWING ARE THE REGULATIONS FOR THE PROTECTION OF THE PUBLIC SAFETY AND OF THE ELECTRIC LINES AND WORKS OF THE POSTMASTER-GENERAL, AND OF OTHER ELECTRIC LINES AND WORKS, PRESCRIBED BY THE BOARD OF TRADE UNDER THE PROVISIONS OF THE ELECTRIC LIGHTING ACT, 1888:—

In these regulations the words, terms, and expressions to which by the Electric Lighting Acts, 1882 and 1888, meanings are assigned, shall have the same respective meanings, provided that in these regulations—

"Energy" means electrical energy, and for the purposes of the Electric Lighting Act, 1888, and these regulations, electrical energy shall be deemed to be an agency within the meaning of the word electricity as defined in the Electric Lighting Act, 1882.

"Conductor" means an electric wire or line used for the supply of energy.

"Aerial conductor" means a conductor which is placed above ground and in the open air.

"Low pressure conductor" means a conductor in which the difference of electric potential either between that conductor and earth or between that conductor or any part thereof and any other conductor on the same poles or supports does not exceed 300 volts, if the supply be on the continuous current system, or the equivalent of 150 volts if on the alternating current system. A difference of potential on the alternating current system shall be deemed to be the equivalent of a difference of potential on the continuous current system, when it produces an equal heating effect if applied to the ends of a thin stretched wire or carbon filament.

"High pressure conductor" means a conductor in which the difference of electric potential as above described is greater than that of a low pressure conductor.

(c) See the interpretation clauses in the Act of 1882, ss. 31, 32, *ante*, p. 1166.

The Telegraph Act, 1878 (41 & 42 Vict. c. 76), s. 2, defines a telegraphic line to mean telegraph posts, and any work (within the meaning of the Telegraph Act, 1863), and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever, used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion or a telegraphic line as defined by that Act.

Appendix.*Regulations.*

Height from ground and distance from buildings, &c.

I. An aerial conductor in any street shall not in any part thereof be at a less height from the ground than twenty feet, or, where it crosses a street, thirty feet, or within six feet of any building or erection other than a support for the conductor, except where brought into a building for the purpose of supply.

Maximum intervals between supports.

II. Every aerial conductor shall be attached to supports at intervals not exceeding 200 feet where the direction of the conductor is straight, or 150 feet where this direction is curved, or where the conductor makes a horizontal angle at the point of support.

Supports, construction and erection of.

III. Every support of aerial conductors shall be of a durable material, and properly stayed against forces due to wind pressure, change of direction of the conductors, or unequal lengths of span, and the conductors and suspending wires (if any) must be securely attached to insulators fixed to the supports. The factor of safety for the suspended wires shall be at least six feet, and for all other parts of the structure at least twelve, taking the maximum possible wind pressure at fifty pounds per square foot. No addition need be made for a possible accumulation of snow.

Connection of support to earth.

IV. Every support, if of metal, shall be efficiently connected to earth, and if of wood or other non-conducting material, shall be protected from lightning by a lightning conductor fastened to the support along its entire length, and projecting above the support to a height of at least six inches, such lightning conductor being efficiently connected to earth.

Efficient earth connection defined.

A support shall be efficiently connected to earth when it is connected to metallic mains for water supply outside of buildings, or, where these are not available, to a mass of metal having a total surface of at least four square feet, buried to a depth of at least three feet in moist earth, provided that in either case the connecting conductor must possess a mechanical strength, and offer a passage to electrical discharges, equal to that of a strand of seven No. 16 galvanised iron wires.

Lightning protectors.

V. Every aerial conductor shall be protected by efficient lightning protectors of pattern approved by the Board of Trade.

Angle of crossing thoroughfares.

VI. Where any conductor crosses a street, the angle between such conductor and the direction of the street at the place of such crossing shall not be less than sixty degrees, and the spans shall be as short as possible.

Crossing other wires.

VII. Where any aerial conductor is erected so as to cross any other aerial conductor or any suspended wire used for purposes other than the supply of energy, precautions shall be taken by the owners of such crossing conductor against the possibility of that conductor coming into contact with the other conductor or wire, or of such other conductor or wire coming into contact with such crossing conductor by breakage or otherwise.

Maximum working current.

VIII. The maximum working current in any aerial conductor shall not be sufficient to raise the temperature of the conductor in any part to such an extent as to materially alter the physical condition or specific resistance of the insulating covering, if any, or in any case to raise such temperature to a greater extent than 30° of Fahrenheit's thermometer, and efficient automatic means shall be provided which will render it impossible for this maximum working current to be by any accident exceeded to the extent of 25 per centum, even for short intervals of time; and special care shall be taken that the cross sectional area and conductivity at joints is sufficient to avoid local heating, and that the joints are protected against corrosion.

High pressure conductors to be insulated.

IX. Every high pressure aerial conductor must be continuously insulated with a durable and efficient material to be approved by the Board of Trade, to a thickness of not less than one-tenth part of an inch, and in cases where the extreme difference of potential in the circuit exceed 2,000 volts, the thickness of insulation must not be less in inches or parts of an inch than the number obtained by dividing the number expressing the volts by 20,000. This insulation must be further efficiently protected on the outside against injury or removal by abrasion.

If this protection be wholly or partly metallic it must be efficiently connected to earth, so, however, as not to cause undue disturbance to other electric lines or works by electrostatic induction or otherwise. **Appendix.**

X. The material used for insulating any high pressure aerial conductor must be such as will not be liable to injurious change of physical structure or condition when exposed to any temperature between the limits of 10° F. and 150° F., or to contact with the ordinary atmosphere of towns or manufacturing districts. Specification of insulation.

XI. The insulation resistance of any circuit using high pressure aerial conductors, including all devices for producing, consuming, or measuring energy, connected to such circuit, shall be such that, should any part of the circuit be put to earth, the leakage current shall not exceed $\frac{1}{100}$ th of an ampere in the case of continuous currents, or $\frac{1}{100}$ th of an ampere in the case of alternating currents. Every such circuit containing high pressure conductors shall be fitted with an indicating device which shall continuously indicate if the insulation resistance of either conductor fall below the conditions required by this Regulation. Minimum insulation resistance allowable. Indicator of leakage.

XII. Every aerial high pressure conductor shall be efficiently suspended by means of non-metallic ligaments to suspending wires, so that the weight of the conductor does not produce in it any sensible stress in the direction of its length, and the insulated conductors and suspended wires, where attached to supports, shall be in contact only with material of highly insulating quality, and shall be so attached and guarded, that in case they break away it shall not be possible for them to fall away clear of the support. Suspension of conductors.

XIII. In the case of aerial conductors carrying alternating currents, the two conductors constituting the line and return for any circuit shall be run parallel with each other, and at a distance apart not exceeding eighteen inches.

XIV. The owner of every aerial conductor shall be responsible for the efficiency of every support to which such conductor is attached, and every support shall be efficiently marked with such mark indicating the ownership of the conductor as the Board of Trade shall approve. Owner of conductor responsible for supports.

XV. Every aerial conductor, including its supports and all the structural parts and electrical appliances and devices belonging to or connected with such conductor, shall be duly and efficiently supervised and maintained by or on behalf of the owners as regards both electrical and mechanical conditions. Maintenance.

XVI. An aerial conductor shall not be permitted to remain erected after it has ceased to be used for the supply of energy, unless the owners of such conductors intend within a reasonable time again to take it into use. Unused conductors to be removed.

XVII. Every aerial conductor shall be placed and used with due regard to electric lines and works from time to time used or intended to be used for the purpose of telegraphic communication or the currents in such electric lines and works, and every reasonable means shall be employed in the placing and use of aerial conductors to prevent injurious affection, whether by induction or otherwise, to any such electric lines or works, or the currents therein. Protection of telegraph and telephone wires from interference.

XVIII. (a.) A notice describing every aerial conductor erected or used for the supply of energy shall forthwith, upon receipt of these regulations, be served upon the Postmaster-General, together with a plan showing the mode and position in which such conductor is erected.

(b.) The Postmaster-General, upon consideration of such notice and plan, may require such alteration in the position or mode of erection, or mode of use of such conductor, or compliance with such other conditions as he may think fit, having regard to the protection of the electric lines or works of the Postmaster-General, and any failure on the part of the body or person owning or using, or entitled to use, the said conductor to comply with such requirements shall be deemed to be a non-compliance with these regulations.

(c.) Any notice required to be served upon the Postmaster-General under these regulations may be served by being addressed to him, and left at, or transmitted through the post to, the General Post Office, London, and any notice required to be

Appendix. — served on the body or person owning or using, or entitled to use, any aerial conductor may be served by being addressed to such body or person and left at, or transmitted through the post to, their or his office or last known place of address.

THE GLEBE LANDS ACT, 1888.

(51 & 52 VICT. CAP. 20.)(a)

An Act to facilitate the sale of Glebe Lands.

[7th August, 1888.]

Short title and
extent.

I. This Act may be cited as the Glebe Lands Act, 1888.
This Act shall not extend to Scotland or Ireland.

Supplemental
provisions as to
sale.

VIII. (1.) For the purpose of facilitating the acquisition of land by cottagers, labourers, and others, it shall be the duty of the Land Commissioners^(b) in giving their approval of a sale under this Act,^(c) either to require as a condition thereof that the land or some part thereof shall be offered for sale in small parcels, or to the sanitary authority of a sanitary district for the purposes of the Allotments Act, 1887, or to satisfy themselves that such offer is not practicable without diminishing the price which can be obtained for the glebe land on a sale.

(2.) Before approving of a sale under this Act of glebe land of any benefice, the Land Commissioners^(b) shall require such notice of the proposed sale to be given as they think sufficient to give information thereof to the parishioners.

(3.) The approval of the Land Commissioners^(b) of a sale under this Act may be signified in the prescribed manner, and shall be conclusive evidence that the requirements of this Act with respect to the sale have been complied with.

(4.) Subject to the provisions of this Act, the provisions of the Settled Land Act, 1882, with respect to the sale of land by a tenant for life shall, so far as circumstances admit, apply to a sale under this Act by an incumbent in like manner as if he were the tenant for life of the land, and accordingly he shall have the like powers with respect to contracts as a tenant for life under that Act, and may do all things necessary and proper for carrying into effect a sale under this Act.

45 & 46 Vict.
c. 38.

THE RAILWAY AND CANAL TRAFFIC ACT, 1888.

(51 & 52 VICT. CAP. 25.)(d)

An Act for the better regulation of Railway and Canal Traffic, and for other purposes.

[10th August, 1888.]

Short title and
construction.
36 & 37 Vict.
c. 48.

I. This Act may be cited as the Railway and Canal Traffic Act, 1888.

(a) This Act is included in the present Work only by reason of the provision in section 8 relating to the sale of some of the land to which it applies to sanitary authorities for the purpose of allotments.

(b) Now the Board of Agriculture. 52 & 53 Vict. c. 30.

(c) This refers to a sale of glebe land under the Act.

(d) This Act confers certain powers of making complaints upon sanitary authorities. See sections 7, 16, 29, 31, 45 (1) and (7). Only such parts of the Act as bear directly upon such complaints have been here inserted. The Act has been extended by the Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54).

This Act shall be construed as one with the Regulation of Railways Act, 1873, and the Acts amending it; and those Acts and this Act may be cited together as the Railway and Canal Traffic Acts, 1873 to 1888. Appendix.

PART I.

COURT AND PROCEDURE OF RAILWAY AND CANAL COMMISSIONERS.

Establishment of Railway and Canal Commission.

VII. (1.) Any of the following authorities, that is to say—

- (a.) Any of the following local authorities, namely, any harbour board, or conservancy authority, the Common Council of the City of London, any council of a city or borough, any representative county body which may be created by an Act passed in the present or any future session of Parliament, any justices in quarter sessions assembled, the Commissioners of Supply of any county in Scotland, the Metropolitan Board of Works, or any urban sanitary authority not being a council as aforesaid, or any rural sanitary authority;(e) or

Provision for complaints by public authority in certain cases.

may make to the commissioners any complaint which the commissioners have jurisdiction to determine,(f) and may do so without proof that such authority is aggrieved by the matter complained of, and any of such authorities may appear in opposition to any complaint which the commissioners have jurisdiction to determine in any case where such authority, or the persons represented by them, appear to the commissioners to be likely to be affected by any determination of the commissioners upon such complaint.

Jurisdiction.

VIII. There shall be transferred to and vested in the commissioners all the jurisdiction and powers which at the commencement of this Act were vested in, or capable of being exercised by the Railway Commissioners, whether under the Regulation of Railways Act, 1873, or any other Act, or otherwise, and any reference to the Railway Commissioners in the Regulation of Railways Act, 1873, or in any other Act,(g) or in any document, shall, from and after the commencement of this Act, be construed to refer to the Railway and Canal Commission established by this Act.

Jurisdiction of Railway Commissioners transferred to the Commission.

IX. Where any enactment in a special Act—

- (a.) Contains provisions relating to traffic facilities,(h) undue preference, or other

Jurisdiction of commissioners under special Acts.

(e) For an example of a complaint by a local authority, see *Maidstone Town Council v. South Eastern Railway Company* and *London, Chatham and Dover Railway Company*, 7 Ry. Cas. 99. See also *Sussex (West) v. London, Brighton and South Coast Railway Company*, *Times*, 24th February, 1892.

(f) As to the complaints which the commissioners have power to determine, see section 8 and succeeding sections, especially section 9, and sections 1 and 4 of 57 & 58 Vict. c. 54. See also *Darlington Local Board v. London and North Western Railway Company* [1894], 2 Q. B. 694; 63 L. J. Q. B. 826; 71 L. T. (N.S.) 461; 43 W. R. 29: overruling *Winsford Local Board v. Cheshire Lines Committee*, 24 Q. B. D. 456; 59 L. J. Q. B. 372; 62 L. T. (N.S.) 268; 38 W. R. 511. See also section 54, *post*, as to the costs of local authorities.

(g) Especially the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 41).

(h) In *West Ham (Mayor, &c. of) v. Great Eastern Railway Company*, 72 L. T. (N.S.) 395; 11 T. L. R. 264; 30 L. J. Notes, 151, it was held (Sir F. Peel dissenting) that the provisions of water-closets at railway stations for the use of passengers, free of charge, was not a reasonable facility for forwarding traffic which could be ordered by the Railway and

Appendix.17 & 18 Vict.
c. 41.

matters mentioned in section two of the Railway and Canal Traffic Act, 1854; (a) or

(b.) Requires a company to which this part of this Act applies to provide any station, road, or other similar work for public accommodation; or

(c.) Otherwise imposes on a company to which this part of this Act applies any obligation in favour of the public or any individual,

or where any Act contains provisions relating to private branch railways or private sidings, the commissioners shall have the like jurisdiction to hear and determine a complaint of a contravention of the enactment as the commissioners have to hear and determine a complaint of a contravention of section 2 of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

Jurisdiction
over tolls and
rates.

X. Where any question or dispute arises, involving the legality of any toll, rate, or charge, or portion of a toll, rate or charge, charged or sought to be charged for merchandise traffic by a company to which this Part of this Act applies, the commissioners shall have jurisdiction to hear and determine the same, and to enforce payment of such toll, rate, or charge, or so much thereof as the commissioners decide to be legal.

Jurisdiction to
order traffic
facilities, not-
withstanding
agreements.

XI. Nothing in any agreement, whether made before or after the passing of this Act, which has not been confirmed by Act or by the Board of Trade, or by the commissioners under the Regulation of Railways Act, 1873, or this Act, shall render a company to which this part of this Act applies unable to afford, or shall authorise such company to refuse, such reasonable facilities for traffic as may, in the opinion of the commissioners, be required in the interests of the public, or shall prevent the commissioners from making and enforcing any order with respect to such facilities.

Power to award
damages.

XII. Where the commissioners have jurisdiction to hear and determine any matter, they may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as they find him to have sustained; and such award of damages shall be in complete satisfaction of any claim for damages, including repayment of overcharges, which, but for this Act, such party would have had by reason of the matter of complaint:

Provided that such damages shall not be awarded unless complaint has been made to the commissioners within one year from the discovery by the party aggrieved of the matter complained of.

The commissioners may ascertain the amount of such damages either by trial before themselves, or by directing an inquiry to be taken before one or more of themselves or some officer of their court.

No damages
where rates
published under
certain con-
ditions.

XIII. In cases of complaint of undue preference no damages shall be awarded if the commissioners shall find that the rates complained of have, for the period during which such rates have been in operation, been duly published in the rate books of the railway company kept at their stations in accordance with section fourteen of the Regulation of Railways Act, 1873, as amended by this Act, (b) unless and until the party complaining shall have given written notice to the railway company requiring them to abstain from or remedy the matter of complaint, and the railway company shall have failed, within a reasonable time, to comply with such requirements in such a manner as the commissioners shall think reasonable.

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Canal Commissioners under section 2 of the Railway and Canal Traffic Act. But cloak-rooms are reasonable facilities. *Singer Manufacturing Company v. London and South Western Railway Company* [1894], 1 Q. B. 833; 63 L. J. Q. B. 411; 70 L. T. (N.S.) 172; 42 W. R. 347; 10 R. 152.

(a) See this section recited at length in section 25, *post*.

(b) Section 34 of this Act amends section 14 of the Act of 1873 as to the place of publication of rates in respect of traffic at places other than stations. Section 14 of the Regulation of Railways Act, 1873, is extended by section 3 of the Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54).

XVI. (1.) Where the Board of Trade or the commissioners, in the exercise of any power given by any general or special Act, on application, order a company to which this Part of this Act applies to provide a bridge, subway, or approach, or any work of a similar character, the Board of Trade or the commissioners, as the case may be, may require, as a condition of making the order, that an agreement to pay the whole or a portion of the expenses of complying with the order shall be entered into by the applicants, or some of them, or such other persons as the Board of Trade or commissioners think fit, and any of the following local authorities, namely, any sanitary authority, (c) highway board, surveyor of highways acting with the consent of the vestry of his parish, or any other authority having power to levy rates, shall have power, if such authority think fit, to enter into any such agreement as is sanctioned by the Board of Trade or commissioners for the purpose of the order.

Appendix.

Power to apportion expenses between railway company and applicants for works.

(2.) In such case any question respecting the persons by whom or the proportions in which the expenses of complying with the order are to be defrayed, may, on the application of any party to the application, or on a certificate of the Board of Trade, be determined by the commissioners.

(3.) In this section, the expression "parish" shall have the same meaning as the same expression has in the Acts relating to highways; and the expression "the consent of the vestry of his parish" shall, in any place where there is no vestry meeting, mean the consent of a meeting of inhabitants contributing to the highway rates, provided that the same notice shall have been given of such a meeting as would be required by law for the assembling of a meeting in vestry.

Appeals.

XVII. (1.) No appeal shall lie from the commissioners upon a question of fact, or upon any question regarding the *locus standi* of a complainant.

Appeals on certain questions to superior court of appeal.

(2.) Save as otherwise provided by this Act, an appeal shall lie from the commissioners to a superior court of appeal.

(3.) An appeal shall not be brought except in conformity with such rules of court as may from time to time be made in relation to such appeals by the authority having power to make rules of court for the superior court of appeal. (d)

(4.) On the hearing of an appeal the court of appeal may draw all such inferences as are not inconsistent with the facts expressly found, and are necessary for determining the question of law, and shall have all such powers for that purpose as if the appeal were an appeal from a judgment of a superior court, and may make any order which the commissioners could have made, and also any such further or other order as may be just, and the costs of and incidental to an appeal shall be in the discretion of the court of appeal, but no commissioner shall be liable to any costs by reason or in respect of any appeal.

(5.) The decision of the superior court of appeal shall be final: Provided that where there has been a difference of opinion between any two of such superior courts of appeal, any superior court of appeal in which a matter affected by such difference of opinion is pending, may give leave to appeal to the House of Lords, on such terms as to costs as such court shall determine.

(6.) Save as provided by this Act, an order or proceeding of the commissioners shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, *certiorari*, or otherwise, either at the instance of the Crown or otherwise.

Supplemental.

XVIII. (1.) For the purposes of this Act the commissioners shall have full jurisdiction to hear and determine all matters, whether of law or of fact, and shall, as

General powers and enforcement of orders.

(c) See also powers conferred on urban sanitary authorities under section 147 of the Public Health Act, 1875, *ante*, p. 166.

(d) See Rules of Supreme Court, 10th April, 1889 (W. N. (1889) p. 189), applying R. S. C., O. 58.

Appendix. respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of their orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of their jurisdiction under this Act or otherwise for carrying this Act into effect, have all such powers, rights, and privileges as are vested in a superior court: Provided that no person shall be punished for contempt of court, except with the consent of an *ex officio* commissioner.

(2.) The commissioners may review and rescind or vary any order made by them; but, save as is by this Act provided, every decision or order of the commissioners shall be final.

Costs.

XIX. The costs of and incidental to every proceeding before the commissioners shall be in the discretion of the commissioners, who may order by whom and to whom the same are to be paid, and by whom the same are to be taxed and allowed.(a)

Power to make rules.

XX. (1.) The commissioners may from time to time, with the approval of the Lord Chancellor and the President of the Board of Trade, make, rescind, and vary general rules for their procedure and practice under this Act, and generally for carrying into effect this part of this Act.

(2.) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if they were enacted by this Act.(b)

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Company to which Part I. applies.

XXIII. This part of this Act shall apply to any railway company, and to any canal company, and to any railway and canal company.

PART II.

TRAFFIC.

Revised classification of traffic and schedule of rates.

XXIV. (1.) Notwithstanding any provision in any general or special Act, every railway company shall submit to the Board of Trade a revised classification of merchandise traffic, and a revised schedule of maximum rates and charges applicable thereto, proposed to be charged by such railway company, and shall fully state in such classification and schedule the nature and amounts of all terminal charges proposed to be authorised in respect of each class of traffic, and the circumstances under which such terminal charges are proposed to be made. In the determination of the terminal charges of any railway company regard shall be had only to the expenditure reasonably necessary to provide the accommodation in respect of which such charges are made, irrespective of the outlay which may have been actually incurred by the railway company in providing that accommodation.

(2.) The classification and schedule shall be submitted within six months from the passing of this Act, or such further time as the Board of Trade may, in any particular case, permit, and shall be published in such manner as the Board of Trade may direct.

(3.) The Board of Trade shall consider the classification and schedule, and any objections thereto, which may be lodged with them on or before the prescribed time, and in the prescribed manner, and shall communicate with the railway company and the persons (if any) who have lodged objections, for the purpose of arranging the differences which may have arisen.

(4.) If, after hearing all parties whom the Board of Trade consider to be entitled to be heard before them respecting the classification and schedule, the Board of

(a) But see 57 & 58 Vict. c. 54, s. 2.

(b) See the Railway and Canal Commission Rules, 1889, dated 22nd February, 1889, Parl. Paper, 1889 (44).

Trade come to an agreement with the railway company as to the classification and schedule, they shall embody the agreed classification and schedule in a provisional order, and shall make a report thereon, to be submitted to Parliament, containing such observations as they think fit in relation to the agreed classification and schedule.

(5.) When any agreed classification and schedule have been embodied in a provisional order, the Board of Trade, as soon as they conveniently can after the making of the provisional order (of which the railway company shall be deemed to be the promoters), shall procure a Bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to the Bill.

(6.) In any case in which a railway company fails within the time mentioned in this section to submit a classification and schedule to the Board of Trade, and also in every case in which a railway company has submitted to the Board of Trade a classification and schedule, and after hearing all parties whom the Board of Trade consider to be entitled to be heard before them, the Board of Trade are unable to come to an agreement with the railway company as to the railway company's classification and schedule, the Board of Trade shall determine the classification of traffic which, in the opinion of the Board of Trade, ought to be adopted by the railway company, and the schedule of maximum rates and charges, including all terminal charges proposed to be authorised applicable to such classification, which would, in the opinion of the Board of Trade, be just and reasonable, and shall make a report to be submitted to Parliament, containing such observations as they may think fit in relation to the said classification and schedule, and calling attention to the points therein on which differences which have arisen have not been arranged.

(7.) After the commencement of the session of Parliament next after that in which the said report of the Board of Trade has been submitted to Parliament, the railway company may apply to the Board of Trade to submit to Parliament the question of the classification and schedule which ought to be adopted by the railway company, and the Board of Trade shall, on such application, and in any case may, embody in a provisional order such classification and schedule as, in the opinion of the Board of Trade, ought to be adopted by the railway company, and procure a Bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to the Bill.

(8.) If, while any Bill to confirm a provisional order made by the Board of Trade under this section is pending in either House of Parliament, a petition is presented against the Bill or any classification and schedule comprised therein, the Bill, so far as it relates to the matter petitioned against, shall be referred to a select committee, or if the two Houses of Parliament think fit so to order, to a joint committee of such Houses, and the petitioner shall be allowed to appear and oppose as in the case of a private Bill.(c)

(9.) In preparing, revising, and settling the classifications and schedules of rates and charges, the Board of Trade may consult and employ such skilled persons as they may deem necessary or desirable; and they may pay to such persons such remuneration as they may think fit, and as the Treasury may approve.

(10.) The Act of Parliament confirming any provisional order made under this section shall be a public general Act, and the rates and charges mentioned in a provisional order as confirmed by such Act shall, from and after the Act coming into operation, be the rates and charges which the railway company shall be entitled to charge and make.

(11.) At any time after the confirmation of any provisional order under this

(c) The 54 & 55 Vict. c. 12, *post*, provides that every governing body within the meaning of the Borough Funds Act, 1872, *ante*, p. 1000, and every county council shall be entitled to be a petitioner, and to appear and oppose any provisional order made under this section, and to provide or contribute towards providing the expenses of the appearance out of rates under their control, as if the Bill were a local or personal Bill within the meaning of the Borough Funds Act, 1872. The 55 & 56 Vict. c. 44, *post*, provides that a provisional order may be made, and a Bill to confirm it may be introduced at any time after hearing the parties as provided in sub-section (4),

Appendix. section, any railway company may, and any person, upon giving not less than twenty-one days' notice to the railway company may, apply in the prescribed manner to the Board of Trade to amend any classification and schedule by adding thereto any articles, matters, or things, and the Board of Trade may hear and determine such application, and classify and deal with the articles, matters, or things referred to therein in such manner as the Board of Trade shall think right. Every determination of the Board of Trade under this sub-section shall forthwith be published in the *London Gazette*, and shall take effect as from the date of the publication thereof.

45 & 46 Vict.
c. 74.

(12.) Nothing in this section shall apply to any remuneration payable by the Postmaster-General to any railway company for the conveyance of mails, letter bags, or parcels under any general or special Act relating to the conveyance of mails, or under the Post Office (Parcels) Act, 1882.

46 & 47 Vict.
c. 34.

(13.) Nothing in this section shall apply to any remuneration payable by the Secretary of State for War to any railway company for the conveyance of War Office stores under the powers conferred by the Cheap Trains Act, 1883.

Provisions as to
through traffic.

XXV. Whereas by section two of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities (*a*) for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company, and railway and canal company, having or working railways or canals which form part of a continuous line of railway, or canal, or railway and canal communication, or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals, or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf:

And whereas it is expedient to explain and amend the said enactment:

Be it therefore enacted, that—

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates); and also the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any person interested in through traffic, of such traffic at through rates: Provided that no application shall be made to the commissioners by such person until he has made a complaint to the Board of Trade under the provisions of this Act as to complaints to the Board of Trade of unreasonable charges, and the Board of Trade have heard the complaint in the manner herein provided.

Provided as follows:—

(1.) The company or person requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company,

(*a*) See *Darlaston Local Board v. London and North Western Railway Company* [1894], 2 Q. B. 694; 63 L. J. Q. B. 826; 71 L. T. (N.S.) 461; 43 W. R. 29.

stating both its amount and the route by which the traffic is proposed to be forwarded; and when a company gives such notice it shall also state the apportionment of the through rate. The proposed through rate may be per truck or per ton :

Appendix.

- (2.) Each forwarding company shall, within ten days, or such longer period as the commissioners may from time to time by general order prescribe, after the receipt of such notice, by written notice inform the company or persons requiring the traffic to be forwarded, whether they agree to the rate and route; and if they object to either, the grounds of the objection :
- (3.) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration :
- (4.) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the commissioners for their decision :
- (5.) If an objection be made to the granting of the rate or to the route, the commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interests of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the commissioners just and reasonable :
- (6.) Where, upon the application of a person requiring traffic to be forwarded, a through rate is agreed to by the forwarding companies, or is made by order of the commissioners, the apportionment of such through rate, if not agreed upon between the forwarding companies, shall be determined by the commissioners :
- (7.) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the commissioners, as to its apportionment, shall be retrospective; in any other case the operation of the rate shall be suspended until the decision is given :
- (8.) The commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof :
- (9.) It shall not be lawful for the commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby.

When any company, upon written notice being given as aforesaid, refuses or neglects without reason to agree to the proposed through rates, or to the route, or to the apportionment, the commissioners, if an order is made by them upon an application for through rates, may order the respondent company or companies to pay such costs to the applicants as they think fit.

XXVI. Subject to the provisions in the last preceding section contained, the commissioners shall have full power to decide that any proposed through rate is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly.

Powers of commissioners as to through rates.

Appendix.

Undue preference in case of unequal tolls, rates, and charges, and unequal services performed.

XXVII. (1.) Whenever it is shown that any railway company charge one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, or lower tolls, rates, or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company.^(a)

(2.) In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the court having jurisdiction in the matter, or the commissioners, as the case may be, may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant: Provided that no railway company shall make, nor shall the court, or the commissioners, sanction any difference in the tolls, rates, or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services.^(b)

(3.) The court or the commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway.

Extension of enactment as to undue preference to goods carried by sea.

XXVIII. The provisions of section two of the Railway and Canal Traffic Act, 1854, and of section fourteen of the Regulation of Railways Act, 1873, and of any enactments amending and extending those enactments shall apply to traffic by sea in any vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried, in the same manner and to the like extent as they apply to the land traffic of a railway company.

Group rates to be chargeable by railway companies.

XXIX. (1.) Notwithstanding any provisions in any general or special Act,^(c) it shall be lawful for any railway company, for the purpose of fixing the rates to be charged for the carriage of merchandise to and from any place on their railway, to group together any number of places in the same district situated at various distances from any point of destination or departure of merchandise, and to charge a uniform rate or uniform rates of carriage for merchandise to and from all places comprised in the group from and to any point of destination or departure.

(2.) Provided that the distances shall not be unreasonable, and that the group rates charged and the places grouped together shall not be such as to create an undue preference.

(3.) Where any group rate exists or is proposed, and in any case where there is a doubt whether any rates charged or proposed to be charged by a railway company may not be a contravention of section two of the Railway and Canal Traffic Act, 1854, and any Acts amending the same, the railway company may, upon giving notice in the prescribed manner, apply to the commissioners, and the commissioners may, after hearing the parties interested and any of the authorities mentioned in section seven of this Act, determine whether such group rate or any rate charged or proposed to be charged as aforesaid does or does not create an undue preference. Any persons aggrieved, and any of the authorities mentioned

(a) The effect of this section is not to limit the Court in dealing with questions of alleged undue preference to the consideration whether or not the lower charge is necessary in the interests of the public. *Liverpool Corn Trade Association v. L. & N. W. Railway Company* [1891], 1 Q. B. 120; 60 L. J. Q. B. 76; 63 L. T. (N.S.) 564; 5 Ray. Cas. 125.

(b) See *Mansion House Association on Railway Traffic v. London and South Western Railway Company* [1895], 1 Q. B. 927; 64 L. J. Q. B. 529; 72 L. T. (N.S.) 507.

(c) See *Davis v. Taff Vale Railway*, 64 L. J. Q. B. 488; 72 L. T. (N.S.) 632; 11 T. L. R. 400.

in section seven of this Act,^(d) may, at any time after the making of any order under this section, apply to the commissioners to vary or rescind the order, and the commissioners, after hearing all parties who are interested, may make an order accordingly.

Appendix.

XXX. Any port or harbour authority or dock company which shall have reason to believe that any railway company is by its rates or otherwise placing their port, harbour, or dock, at an undue disadvantage as compared with any other port, harbour, or dock to or from which traffic is or may be carried by means of the lines of the said railway company, either alone or in conjunction with those of other railway companies, may make complaint thereof to the commissioners, who shall have the like jurisdiction to hear and determine the subject-matter of such complaint as they have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

Power to dock companies and harbour boards to complain of undue preference.

XXXI. (1.) Whenever any person receiving or sending or desiring to send goods by any railway is of opinion that the railway company is charging him an unfair or an unreasonable rate of charge, or is in any other respect treating him in an oppressive or unreasonable manner, such person may complain to the Board of Trade.

Complaints to Board of Trade of unreasonable charges by railway companies.

(2.) The Board of Trade, if they think that there is reasonable ground for the complaint, may thereupon call upon the railway company for an explanation, and endeavour to settle amicably the differences between the complainant and the railway company.

(3.) For the purpose aforesaid, the Board of Trade may appoint either one of their own officers or any other competent person to communicate with the complainant and the railway company, and to receive and consider such explanations and communications as may be made in reference to the complaint; and the Board of Trade may pay to such last-mentioned person such remuneration as they may think fit, and as may be approved by the Treasury.

(4.) The Board of Trade shall from time to time submit to Parliament reports of the complaints made to them under the provisions of this section, and the results of the proceedings taken in relation to such complaints, together with such observations thereon as the Board of Trade shall think fit.

(5.) A complaint under this section may be made to the Board of Trade by any of the authorities mentioned in section seven of this Act,^(d) in any case in which, in the opinion of any of such authorities, they or any traders or persons in their district are being charged unfair or unreasonable rates by a railway company; and all the provisions of this section shall apply to a complaint so made as if the same had been made by a person entitled to make a complaint under that section.

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PART III.

CANALS.

XXXVI. All the provisions of Part II. of this Act relating to any railway company shall, so far as applicable, apply to every canal company, and to every railway and canal company; and in Part II. of this Act, unless the context otherwise requires, the expression "railway company" shall include a canal company

Part II. to extend to canal companies.

^(d) Sanitary authorities, urban and rural, are mentioned in section 7. See the section, *ante*, p. 1235.

Appendix. and railway and canal company, and the expression "railway" shall include a canal, and the expression "rate" shall include tolls and dues of every description chargeable for the use of any canal or by any canal company.

Application of
36 & 37 Vict.
c. 48, to canals.

XXXVII. (1.) Section fifteen of the Regulation of Railways Act, 1873, shall apply to the terminal charges of a canal company.

(2.) The Railway and Canal Traffic Act, 1854, as amended by the Regulation of Railways Act, 1873, shall extend to any person whose consent is required to any variation of the rates, tolls, or dues charged for the use of any canal, or by any canal company, in like manner as if such person were a canal company, and the expressions "canal company" and "railway and canal company" in the said Acts and this Act shall be construed accordingly to include such person.

(3.) The provisions of the Railway and Canal Traffic Act, 1854, and the Regulation of Railways Act, 1873, with respect to rates, shall apply to tolls and dues of every description chargeable for the use of any canal or by any canal company. And nothing in any agreement, whether made before or after the passing of this Act, and whether confirmed by Act of Parliament or not, and nothing in this Act shall prevent the commissioners from making or enforcing any order for a through rate or toll which may in their opinion be required in the interest of the public.

(4.) Any company allowing traffic to pass from a canal on to any other canal or any railway, or from a railway on to a canal, shall be deemed to be a forwarding company, and the allowing of traffic so to pass shall be deemed to be the forwarding of traffic within the meaning of the above-mentioned Acts.

(5.) The provisions of the Railway and Canal Traffic Act, 1854, and of the Regulation of Railways Act, 1873, and of this Act, with respect to through rates, shall extend to any canals which, in connection with any river or other waterway, form part of a continuous line of water communication, notwithstanding that tolls may not be leviable by authority of Parliament upon such river or other waterway.

Powers of commissioners over canal tolls, rates, and charges where a railway company or its officers own or control the traffic of a canal.

XXXVIII. Where a railway company, or the directors or officers of a railway company, or any of them or any persons on their behalf, have the control over, or the right to interfere in or concerning the traffic conveyed, or the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on a canal, or any part of a canal, and it is proved to the satisfaction of the commissioners that the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on the canal are such as are calculated to divert the traffic from the canal to the railway, to the detriment of the canal or person sending traffic over the canal or other canals adjacent to it—

(1.) The commissioners may, on the application of any person interested in the traffic of the canal, make an order requiring the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal, to be altered and adjusted in such a manner that the same shall be reasonable as compared with the rates and charges for the conveyance of merchandise on the railway :

(2.) If within such time as may be prescribed by the order of the commissioners, the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal are not altered and adjusted as required by such order, the commissioners may themselves by an order make such alterations in and adjustment of the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal as they shall think just and reasonable, and the tolls, rates, and charges as altered and adjusted by the order of the commissioners shall be binding on the company or persons owning or having the control over the traffic of, or the tolls, rates, and charges levied on the traffic of, or for the conveyance of merchandise on the canal :

(3.) No application shall be made to the commissioners under this section until the Board of Trade have certified that the applicant is a fit person to make the application, and that the application is a proper one to be submitted

for the adjudication of the commissioners; and no order shall be made by the commissioners under this section unless notice of the application has been served upon such company and persons, and in such manner as the Board of Trade may direct:

Appendix.

- (4.) The commissioners may at any time, upon the application of any company or person affected by any order made under this section, and after notice to and hearing such companies and persons as the commissioners may by any general rules or special order prescribe, rescind or vary any order made under this section.

* * * * *

XL. (1.) Every canal company shall, before such date as the Board of Trade may prescribe, forward to the Board of Trade true copies, certified in such manner as the Board of Trade direct, of any bye-laws or regulations of such company which are in force at the commencement of this Act; and the bye-laws of any canal company, copies of which are not forwarded to the Board of Trade as provided by this section, shall from and after the said date cease to have any operation, save in so far as any penalty may have been already incurred under the same. Bye-laws of canal companies.

(2.) A bye-law or regulation of any canal company hereafter to be made under any power which has before or at the time of the passing of this Act been, or which may hereafter be, conferred on any canal company, shall not have any force or effect until two months after a true copy of such bye-law or regulation, certified in such manner as the Board of Trade direct, has been forwarded to the Board of Trade, unless the Board of Trade before the expiration of such period have signified their approbation thereof.

(3.) The Board of Trade may, at any time after any existing or future bye-laws or regulations of a canal company have been forwarded to them, notify to the company their disallowance thereof, or of any of them, and in case such bye-laws or regulations are in force at the time of the disallowance, the time at which the said bye-laws or regulations shall cease to be in force. A bye-law or regulation disallowed by the Board of Trade shall not after such disallowance have any force or effect whatever, save (as regards any bye-law or regulation which may be in force at the time of the disallowance thereof) in so far as any penalty may have been then already incurred under the same.

(4.) The Board of Trade may from time to time make, rescind, and vary such regulations as they think fit with respect to the publication by canal companies of their bye-laws and regulations, and with respect to the publication by canal companies of their intention to apply to the Board of Trade for the allowance of any intended bye-laws and regulations. Any regulations so made which are for the time being in force, shall have effect as if they had been enacted by this Act.

* * * * *

XLIII. (1.) Any canal company may make and enter into contracts and arrangements with any other canal company or canal companies for the passage over and along their respective canals, or any of them, of boats, barges, vessels, and other through traffic, and for the use, by such traffic, of the wharves, landing places, and other works of any such canal, upon payment of such through tolls, rates, and charges, and subject to such conditions and restrictions as may be agreed upon between such companies; and for the collection and recovery by any one of the companies on behalf of themselves and the other companies interested of the tolls, rates, and charges payable in respect of such through traffic; and for the division and apportionment of the tolls, rates, and charges; and any such contract may contain provisions for the erection and maintenance of or otherwise for providing warehouses, offices, and other buildings and conveniences, and any other provisions for the purpose of carrying into effect any such arrangement, and any company may apply their funds or moneys for the same purpose. Canal companies may agree for through tolls, &c.

(2.) Notwithstanding any enactments providing for the charge of equal tolls, rates, and charges, such through tolls, rates, and charges as above mentioned may respectively be computed at a lower toll or rate per mile than the tolls, rates, or charges charged for the passage over and along the same canals of like traffic, not being through traffic, without necessitating or occasioning any reduction of the last-mentioned tolls, rates, or charges.

Appendix.

(3.) Any like contracts and arrangements existing at the passing of this Act shall be, and from the respective dates of the making thereof shall be, deemed to have been as valid as if the same had been made after the commencement of this Act.

* * * * *

Abandonment
of canal.

XLV. (1.) Where, on the application of a canal company, it appears to the Board of Trade that any canal or part of a canal belonging to the applicants (hereinafter referred to as an unnecessary canal) is at the time of making the application unnecessary for the purposes of public navigation, or where, on the application of any local authority, (a) or of three or more owners of lands adjoining or near to any canal or part of a canal, it appears to the Board of Trade that that canal or part of a canal (hereinafter referred to as a derelict canal) has for at least three years previously to the making of the application been disused for navigation, or, by reason of the default of the proprietors thereof, has become unfit for navigation, or that the lands adjoining or near thereto have suffered injury by water that has escaped from the derelict canal, and that the proprietors of the derelict canal decline or are unable to effect the repairs necessary to prevent further injury, the Board of Trade may by warrant signed by their secretary authorise the abandonment by the existing proprietors of such unnecessary canal or such derelict canal, and after the granting of the warrant, and the due publication as required by the Board of Trade of a notice of the granting thereof, the Board of Trade may make an order releasing the canal company or other the proprietors of the unnecessary or derelict canal from all liability to maintain the same canal, and from all statutory and other obligations in respect thereof, or of or consequent on the abandonment thereof.

(2.) In the case of an unnecessary canal no warrant of abandonment shall be granted unless the Board of Trade are satisfied—

- (a.) That it is unnecessary for the purpose of public navigation;
- (b.) That the application has been expressly authorised by a resolution of a majority of the shareholders of the canal company owning the canal present and voting at an extraordinary or special general meeting of that company;
- (c.) That such public and other notices of the application have been given as the Board of Trade may require;
- (d.) That compensation (the amount thereof to be determined in case of difference as the Board of Trade may prescribe) has been made to all persons entitled to compensation by reason of the proposed abandonment of the canal.

(3.) In the case of a derelict canal the warrant may be granted on the condition that the canal or any part thereof, with all or any of the powers relating thereto, be transferred to any person, body of persons, or local authority, and where any such condition is imposed the Board of Trade may, if they think fit, frame and embody in a provisional order a scheme for the management of the canal or any part thereof.

(4.) The provisional order may provide for the constitution of a body to manage the canal or any part thereof, for the transfer to that body or any local authority of the canal or any part thereof, and of all or any of the powers relating thereto, for the limitation or discharge of any liabilities affecting the canal or the owners thereof for the time being, and for any other matters which may appear to the Board of Trade to be necessary or proper for carrying this section into effect.

(5.) The Board of Trade may submit to Parliament for confirmation any provisional order made by it in pursuance of this section, but any such order shall be of no force unless and until it is confirmed by Act of Parliament.

(6.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(7.) In this section the expression "local authority" means any one of the local authorities mentioned in section seven of this Act. (b)

(a) See sub-section (7), *infra*.

(b) See the section, *ante*, p. 1235. The expression "local authority" includes an urban or rural sanitary authority.

(8.) For the purpose of giving effect to the provisions of this section, the Board of Trade may require the applicants to furnish any evidence in their possession or under their control relative to the application, and may at the expense of the applicants appoint and send an officer to inspect the canal referred to in the application, and to obtain information and evidence in the neighbourhood thereof relative to the proposed abandonment, and may from time to time make regulations as to the mode of making applications, and the nature and mode of publication of notices, and generally as to the conduct of proceedings.

XLVI. In this part of this Act the expression "canal company" shall include a "railway and canal company," so far as relating to any canal of any such last-mentioned company.

Appendix.

Definition of
"canal com-
pany."

PART IV.

MISCELLANEOUS.

XLVIII. On any rating appeal, (c) and before any court, where it may be material to show the receipts or profits of a railway company or canal company, or railway and canal company, it shall be lawful for the company to prove the same by written statements or returns verified by the affidavit or statutory declaration of the manager or other responsible officer, and any such statements or returns shall be *prima facie* evidence of the facts therein stated with respect to such receipts or profits: Provided that the person by whom any such affidavit or statutory declaration is made shall in every case, if required, attend to be cross-examined thereon.

Evidence on
rating appeals.

L. In any proceedings under this Act any party may appear before the commissioners either by himself in person or by counsel or solicitor.

Parties may
appear in person
or by counsel,
&c.

LII. The powers and jurisdiction conferred by this Act on the commissioners or Board of Trade shall be in addition to and not in substitution for any powers and jurisdiction vested in the commissioners or Board of Trade by any statute.

Saving of
powers con-
ferred on com-
missioners and
Board of Trade.

LIII. (1.) All documents purporting to be rules, orders, or certificates made or issued by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence, and deemed to be such orders, rules, or certificates without further proof, unless the contrary is shown.

Proceedings of
Board of Trade.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

LIV. (1.) Where any local authority having power under this Act to make or oppose any complaint to the commissioners, or the Board of Trade, or to enter into any agreement to pay the whole or a portion of the expenses of complying with an order of the commissioners or the Board of Trade, or to make any application for the abandonment or acquisition of a canal under this Act, incur any expenses in or incidental to such complaint, opposition, agreement, or application, such expenses may be defrayed out of the rates or funds out of which the expenses incurred by such authority in the execution of their ordinary duties are defrayed, and if such authority is a rural sanitary authority in England, shall be defrayed as general

Expenses of
local autho-
rities.

(c) See the definition of this expression in section 55, *post*.

Appendix. expenses, unless the Local Government Board direct that they shall be defrayed as special expenses.^(a)

(2.) A local authority may enter into any contract involving the payment by themselves and their successors of any expenses authorised by this section to be defrayed.

(3.) Where any such local authority have no power to borrow money for the purpose of defraying any expenses authorised by this section, such authority, if other than a surveyor of highways, may, with the consent of the Board of Trade in the case of any harbour board or conservancy authority, and with the consent of the Local Government Board in the case of any other authority, borrow money in manner provided by the Local Loans Act, 1875,^(b) on the security of the rates or funds out of which the expenses are authorised to be defrayed, and the prescribed period for the loan shall be such period as the Board giving such consent may approve.

38 & 39 Vict.
c. 83.

(4.) On the request of any board whose consent is required for such loan, the Board of Trade or commissioners shall certify such particulars respecting the amount of the said expenses and the propriety of incurring the same and of borrowing for the payment thereof as may be requested by such board.^(c)

* * * * *

Definitions.

LV. In this Act, unless the context otherwise requires,—

Terms defined by the Regulation of Railways Act, 1873, have the meanings thereby assigned to them :

The term “conservancy authority” means any persons who are otherwise than for private profit intrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal or inland water or navigation :

The term “harbour board” means any persons who are otherwise than for private profit intrusted with the duty or invested with the power of constructing, improving, managing, regulating, and maintaining a harbour, whether natural or artificial, or any dock :

The term “Lord Chancellor” means the Lord High Chancellor of Great Britain :

The term “undue preference” includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in any respect, in favour of or against any person or particular class of persons or any particular description of traffic :

The term “terminal charges” includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat :

The term “merchandise” includes goods, cattle, live stock, and animals of all descriptions :

The term “trader” includes any person sending, receiving or desiring to send merchandise by railway or canal :

The term “home” in relation to merchandise, includes the United Kingdom, the Channel Islands, and the Isle of Man :

The term “rating appeal” means an appeal against any valuation list or against any poor rate or any other local rate :^(d)

* * * * *

The term “superior court” means, as regards England, the High Court of Justice

The term “superior court of appeal” means, as regards England, Her Majesty’s Court of Appeal

* * * * *

(a) The expenses in the case of an urban authority will, in general, be paid out of the general district fund. See section 207 of the Public Health Act, 1875, *ante*, p. 276. As to special expenses, see section 229 of the same Act, *ante*, p. 308.

(b) The text of this Act is set out, *ante*, p. 1018.

(c) The remainder of this section relates only to Ireland.

(d) The expression “local rate” would include a general district rate. Parts of the remainder of this section relating to Scotland and Ireland only are here omitted.

THE MORTMAIN AND CHARITABLE USES ACT, 1888.

(51 & 52 VICT. CAP. 42.)(e)

An Act to consolidate and amend the Law relating to Mortmain and to the disposition of Land for Charitable Uses. [13th August, 1888.]

* * * * *

PART I.

MORTMAIN.

I. (1.) Land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a license from Her Majesty the Queen, or of a statute for the time being in force,^(f) and if any land is so assured otherwise than as aforesaid, the land shall be forfeited to Her Majesty from the date of the assurance, and Her Majesty may enter on and hold the land accordingly: Forfeiture on unlawful assurance or acquisition in mortmain.

(2.) Provided as follows :

- (i.) If the land is held directly of a mesne lord under Her Majesty, that mesne lord may enter on and hold the land at any time within twelve months from the date of the assurance :
- (ii.) If the land is held of more than one mesne lord in gradation under Her Majesty, the superior of those mesne lords may enter on and hold the land at any time within six months after the time at which the right of the inferior lord to enter on the land expires.
- (iii.) If a mesne lord is at the time when his right of entry accrues under this Act a lunatic or otherwise under incapacity, his right of entry may be exercised by his guardian or the committee of his estate, or by such person as Her Majesty's High Court of Justice may appoint in that behalf :
- (iv.) If the right of entry under this Act is exercised by or on behalf of a mesne lord, the land shall be forfeited to that lord from the date of the assurance instead of to Her Majesty :

II. It shall be lawful for Her Majesty the Queen, if and when and in such form as she thinks fit, to grant to any person or corporation a license to assure in mortmain land in perpetuity, or otherwise, and to grant to any corporation a license to acquire land in mortmain, and to hold the land in perpetuity or otherwise. Power to Her Majesty to grant licenses in mortmain.

III. No entry or holding by or forfeiture to Her Majesty under this Part of this Act, shall merge or extinguish, or otherwise affect, any rent or service which may be due in respect of any land to Her Majesty or any other lord thereof. Saving for rents and services.

(e) The Public Health Act, 1875, s. 7, *ante*, p. 26, provided that local boards and improvement commissioners may hold lands without license in mortmain for the purposes of that Act. And by sect. 85 (5) of the Local Government Act, 1894, *ante*, p. 773, the change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers. By sect. 24 (7) of the Local Government Act, 1894, *ante*, p. 722, every district council for a rural district may hold land for the purposes of their powers and duties without license in mortmain. As to the powers of the corporation of a borough, see the Municipal Corporations Act, 1882, s. 107. By sect. 10 (2) of 55 & 56 Vict. c. 29, *post*, any corporate body may hold lands for the purposes of that Act without any license in mortmain. The powers of a sanitary authority to hold lands for purposes other than those mentioned in these statutes depend upon this statute as amended by 53 & 54 Vict. c. 16; 54 & 55 Vict. c. 73; and 55 & 56 Vict. c. 11, *post*.

(f) See note (a), *supra*.

Appendix.

PART II.

CHARITABLE USES.

Conditions
under which
assurances may
be made to
charitable uses.

IV. (1.) Subject to the savings and exceptions contained in this Act, every assurance of land to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses, shall be made in accordance with the requirements of this Act, and unless so made shall be void.^(a)

(2.) The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

(3.) The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision for the benefit of the assurator or of any person claiming under him.

(4.) Provided that the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assurator as to the assurator himself; namely,

(i.) The grant or reservation of a peppercorn or other nominal rent;

(ii.) The grant or reservation of mines or minerals;

(iii.) The grant or reservation of any easement;

(iv.) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage, or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;

(v.) A right of entry on non-payment of any such rent or on breach of any such covenant or provision;

(vi.) Any stipulations of the like nature for the benefit of the assurator or of any person claiming under him.

(5.) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rentcharge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for non-payment thereof.

(6.) If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

(7.) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assurator including in those twelve months the days of the making of the assurance and of the death.

(8.) If the assurance is of stock in the public funds, then, unless it is made in good faith, for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assurator, including in those six months the days of the transfer and of the death.

(9.) If the assurance is of land, or of personal estate other than stock in the public funds, it must, within six months after the execution thereof, be enrolled

(a) A domiciled Victorian, who died in June, 1891, bequeathed £10,000 to the mayor and corporation of the city of Canterbury, in England, for the purpose of their buying a suitable piece of land and erecting thereon a free library. Under the law of Victoria the corporation were able lawfully to expend the money as directed by the testator. Held, that the English Mortmain Act, 1888, only applied in so far as that the assurance of the land must be in accordance with the provisions of the Act, and that the bequest was valid: *Canterbury (Mayor, &c. of) v. Wyburn* [1895], A. C. 89; 64 L. J. P. C. 36; 43 W. R. 430.

in the central office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses, those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land. **Appendix.**

V. (1.) Where an instrument, the enrolment whereof is required under this Part of this Act for the validation of an assurance, is not duly enrolled within the requisite time, Her Majesty's High Court of Justice, or the officer having control over the enrolment of deeds in the central office, may, on application in such manner and on payment of such fee as may be prescribed by rules of the Supreme Court, and on being satisfied that the omission to enrol the instrument in proper time has arisen from ignorance or inadvertence, or through the destruction or loss of the instrument by time or accident, and that the assurance was of a nature to be validated under this section, order or cause the instrument to be enrolled. Power to remedy omission to enrol within requisite time.

(2.) Thereupon, if the assurance was made in good faith and for full and valuable consideration, and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorized by this Act, and if at the time of the application possession or enjoyment was held under the assurance then enrolment in pursuance of this section shall have the same effect as if it had been made within the requisite time.

(3.) Provided that if at the time of the application any proceeding for setting aside the assurance, or for asserting any right founded on the invalidity of the assurance, is pending, or any decree or judgment founded on such invalidity, has been then obtained, the enrolment under this section shall not give any validity to the assurance.

(4.) Where the instrument omitted to be enrolled in proper time has been destroyed or lost by time or accident, and the trusts thereof sufficiently appear by a copy or abstract thereof or some subsequent instrument, such copy, abstract, or subsequent instrument may be enrolled under this section in like manner and with the like effect as if it were the instrument so destroyed or lost.

(5.) An application under this section may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of, or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled.

PART III.

EXEMPTIONS.

VI. (1.) Parts One and Two of this Act shall not apply ^(b) to an assurance by deed of land of any quantity or to an assurance by will of land of the quantity herein-after mentioned for the purposes only of a public park, a schoolhouse for an elementary school, a public museum, or an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only. Assurances for a public park, elementary school, or public museum.

(2.) Provided that a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assurator, or be a reproduction in substance of a devise made in a previous will in force at

(b) It is provided by 53 & 54 Vict. c. 16, *post*, that Parts I. and II. of this Act shall not apply to gifts of land for working classes dwellings.

It is further provided by 55 & 56 Vict. c. 11, *post*, that the above section, except as therein mentioned, shall not apply to any assurance by deed of land to any local authority, for any purposes for which such authority is empowered by any Act of Parliament to acquire land. See sect. 164 of the Public Health Act, 1875, *ante*, p. 226.



Appendix.

the time of such reproduction, and which was executed not less than twelve months before the death of the assurator, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed.

(3.) The quantity of land which may be assured by will under this section shall be any quantity not exceeding twenty acres for any one public park, and not exceeding two acres for any one public museum, and not exceeding one acre for any one schoolhouse.

(4.) In this section—

- (i.) “Public park” includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public;
- (ii.) “Elementary school” means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week;
- (iii.) “Schoolhouse” includes the teacher’s dwelling house, the playground (if any), and the offices and premises belonging to or required for a school;
- (iv.) “Public museum” includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connection therewith.

Assurances for certain universities, colleges, and societies.

VII. Part Two of this Act shall not apply to the following assurances :—

- (i.) An assurance of land, or personal estate to be laid out in the purchase of land, to or in trust for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges or houses of learning within any of those universities, or to or in trust for any of the Colleges of Eton, Winchester, and Westminster, for the better support and maintenance of the scholars only upon the foundations of those last-mentioned colleges, or to or in trust for the warden, council, and scholars of Keble College;
- (ii.) An assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration :

Provided that the trustees of the instrument containing any assurance to which this section applies or declaring the trusts thereof, may, if they think fit, at any time cause the instrument to be enrolled in the central office of the Supreme Court of Judicature.

Substitution of provisions of Act for corresponding repealed enactments.

VIII. Where by any statute now in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner.

PART IV.

SUPPLEMENTAL.

Adaptation of law to system of land registration.
38 & 39 Vict.
c. 87.

IX. Any assurance of land which is by this Act required to be made by deed may be made by a registered disposition under the provisions of the Land Transfer Act, 1875, or of any Act amending the same, and any assurance so made shall be exempt from the provisions of this Act as to execution in the presence of witnesses, and as to enrolment in the central office of the Supreme Court.

X. In this Act, unless the context otherwise requires,—

Appendix.

(i.) “Assurance” includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument; and “assure” and “assuror” have meanings corresponding with assurance.

Definitions.

(ii.) “Will” includes codicil.

(iii.) (a)

(iv.) “Full and valuable consideration” includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent-charge or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved as aforesaid.

XI. This Act shall not extend to Scotland or Ireland.

Extent of Act.

XII. Nothing in this Act shall affect the operation or validity of any charter, licence, or custom in force at the passing of this Act enabling land to be assured or held in mortmain.

Savings for existing customs, &c.

XIII. (1.) The Acts specified in the Schedule to this Act are hereby repealed, from and after the passing of this Act, to the extent specified in the third column of that schedule :

Repeal.

Provided that this repeal shall not affect—

(a.) Any enactment not hereby repealed referring to any enactment hereby repealed, except that in lieu of that reference the unrepealed enactment shall be construed as if it referred to the corresponding provisions of this Act; or

(b.) The past operation of any enactment hereby repealed, or any instrument or thing executed, done, or suffered before the passing of this Act; or

(c.) Any right, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or

(d.) Any action, proceeding, or thing pending or uncompleted at the time of the passing of this Act.

(2.) Whereas by the preamble to the Act of the forty-third year of Elizabeth, chapter four (being one of the enactments hereby repealed), it is recited as follows:—

“Whereas landes tenementes rentes annuities p'fittes hereditamentes, goodes chattels money and stockes of money, have bene heretofore given limited appointed and assigned, as well by the Queenes moste excellent Majestie and her moste noble progenitors, as by sondrie other well disposed p'sons, some for reliefe of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univ'sities, some for repaire of bridges portes havens causwaies churches seabankes and highewaies, some for educacon and p'ferment of orphans, some for or towards reliefe stocke or maintenance for howses of correccion, some for marriages of poore maidens, some for supportacon ayde and helpe of younge tradesmen, handicraftesmen and p'sons decayed, and others for reliefe or redemption of prisoners or captives, and for aide or ease of any poore inhabitantes conc'ninge paymente of fifteenes, settinge out of souldiers and other taxes; whiche landes tenements rents annuities p'fitts hereditaments goodes chattels money and stockes of money nev'theles have not byn employed accordinge to the charitable intente of the givers and founders thereof, by reason of fraudes breaches of truste and negligence in those that shoulde paye delyver and employ the same;”

and whereas in divers enactments and documents reference is made to charities within the meaning, purview, and interpretation of the said Act :

(a) Sub-section (iii.) was repealed by 54 & 55 Vict. c. 73, *post*. It contained the definition of “land.” See now section 3 of the Act last mentioned, *post*.

Appendix. Be it therefore enacted that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.

Short title. XIV. This Act may be cited as the Mortmain and Charitable Uses Act, 1888.

Sect. 13.

SCHEDULE.

ACTS REPEALED.

Note.—This Schedule is to be read as referring to the Revised Edition of the Statutes prepared under the direction of the Statute Law Committee, in all cases of statutes included in that edition as already published.

The chapters of the statutes (before the division into separate Acts) are described by the marginal abstracts given in that edition.

Session and Chapter.	Title.	Extent of Repeal.
7 Edw. 1. - -	<i>Statut' de Viris Religiosis</i> - -	The whole Act.
13 Edw. 1, c. 32 -	Remedy in case of mortmain under judgments by collusion	The whole chapter.
18 Edw. 3, st. 3, c. 3 -	Prosecutions against religious persons for purchasing lands in mortmain	The whole chapter.
15 Ric. 2, c. 5 - -	St. 7 Edw. 1. de Religiosis. Converting land to a churchyard declared to be within that statute Mortmain where any is seised of lands to the use of spiritual persons Mortmain to purchase lands in gilds, fraternities, offices, commonalties, or to their use	The whole chapter.
23 Hen. 8, c. 10 -	An Acte for feoffments and assurance of landes and tenements made to the use of any parisshe Church, Chapell, or suche like	The whole Act.
43 Eliz. c. 4 - -	An Acte to redress the misemployment of landes, goodes, and stockes of money heretofore given to charitable uses	The whole Act.
7 & 8 Will. 3, c. 37 -	An Acte for the encouragement of charitable gifts and dispositions	The whole Act.
9 Geo. 2, c. 36 - -	An Act to restrain the disposition of lands whereby the same become unalienable	The whole Act, except so much of section five as is unrepealed.
9 Geo. 4, c. 85 - -	An Act for remedying a defect in the titles of lands purchased for charitable purposes	The whole Act.
24 & 25 Vict. c. 9 -	An Act to amend the law relating to the conveyance of land for charitable uses	The whole Act.
25 & 26 Vict. c. 17 -	An Act to extend the time for making enrolments under the Act passed in the last session of Parliament, intituled "An Act to amend the law relating to the conveyance of land for charitable uses, and to explain and amend the said Act"	The whole Act.

SCHEDULE—continued.

Appendix.

Session and Chapter.	Title.	Extent of Repeal.
27 & 28 Vict. c. 13 -	An Act to further extend the time for making enrolments under the Act passed in the twenty-fourth year of the reign of Her present Majesty, intituled "An Act to amend the law relating to the conveyance of lands for charitable uses, and otherwise to amend the said law"	The whole Act.
29 & 30 Vict. c. 57 -	An Act to make further provision for the enrolment of certain deeds, assurances, and other instruments relating to charitable trusts	The whole Act.
31 & 32 Vict. c. 44 -	An Act for facilitating the acquisition and enjoyment of sites for buildings for religious, educational, literary, scientific, and other charitable purposes	Sections one and two.
34 & 35 Vict. c. 13 -	An Act to facilitate gifts of land for public park, schools, and museums	The whole Act.
35 & 36 Vict. c. 24 -	An Act to facilitate the incorporation of trustees of charities for religious, educational, literary, scientific, and public charitable purposes, and the enrolment of certain charitable trust deeds	Section thirteen.

THE PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888.

(51 & 52 VICT. CAP. 62.)

An Act to amend the Law with respect to Preferential Payments in Bankruptcy, and in the winding-up of Companies. [24th December, 1888.]

* * * * *

I. (1.) In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts—

(a.) All parochial or other local rates^(a) due from the bankrupt or the company at the date of the receiving order or, as the case may be, the commencement of the winding-up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement of the winding-up, and not exceeding in the whole one year's assessment; (b)

(a) This expression would include general district rates and all other sanitary rates made by an urban or rural authority. It does not include harbour dues. *In re H. & Co.*, 27 L. R. Ir. 271.

(b) This section is enacted in place of section 40, sub-section (1)(a), of the Bankruptcy Act, 1883. That Act provided only for the bankruptcy of a person rated. The present

Appendix.

- (b.) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds; and
- (c.) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order, or, as the case may be, the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up.
- (2.) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (3.) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.
- (4.) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.
- Provided, that in respect of any money paid under any such charge the landlord

enactment applies also to the winding-up of a company. It provides in effect that all rates made upon a bankrupt or company within twelve months preceding the receiving order or winding-up shall be paid in full in priority to all other debts.

The law before this Act will be found in *Re Wearmouth Crown Glass Company*, 19 Ch. D. 640; 45 L. T. (n.s.) 757; 30 W. R. 316; *Re Watson Kipling and Company*, 23 Ch. D. 500; 31 W. R. 574; 52 L. J. Ch. 473; 49 L. T. (n.s.) 115; *West Hartlepool Iron Company*, 34 L. T. (n.s.) 568, 570; *International Marine Hydropathic Company*, 28 Ch. D. 470; 33 W. R. 587; *National Arms and Ammunition Company*, 28 Ch. D. 474; 54 L. J. Ch. 673; 52 L. T. (n.s.) 237; 33 W. R. 585; 49 J. P. 90; *Flint Coal and Cannel Company*, 56 L. J. Ch. 232; 56 L. T. (n.s.) 16; *Dry Dock Corporation*, 39 Ch. D. 306; 58 L. J. Ch. 33; 59 L. T. (n.s.) 763; 37 W. R. 18; *Re Blazer Firelighter, Limited* [1895], 1 Ch. 402; 64 L. J. Ch. 161; 71 L. T. (n.s.) 665; 43 W. R. 364; 11 T. L. R. 65.

In a case not within this Act, which did not come into operation until 31st December, 1888 (see section 5, *infra*), a rate became due and payable in respect of a company's premises before the commencement of a winding-up under the Companies Acts:—Held, that the rate had not any priority as between the claimants for the rate and other creditors of the same class, the case not being affected by section 10 of the Judicature Act, 1875, and section 40 of the Bankruptcy Act, 1883. *Re Art Engraving Company*, 60 L. T. (n.s.) 381; W. N. 1889, p. 38; 5 T. L. R. 275.

A. was assessed to a local rate as the occupier of certain premises, and his rate was payable in advance for half a year on the 8th October, 1886. On the 17th January, 1887, A. became bankrupt, and at that time the rate remained unpaid. On the 1st February, 1887, the official receiver as trustee sold A.'s interest in the premises to B., who allowed A. to remain in occupation as his tenant. The rate was claimed from the trustee for the whole half-year; the trustee offered to pay the proportion of it up to February 1st, being for the period during which he continued occupier:—Held, that the bankrupt had not ceased to be occupier, and that the trustee was liable for the rate for the whole half-year. *Ex parte Ystradfordryg Local Board, Re Thomas*, 57 L. J. Q. B. 39; 58 L. T. (n.s.) 113; 36 W. R. 143; 4 Morrell Bkcy. Rep. 295. See also *In re Smith, Ex parte Mason, ante*, p. 974.

As to the rating of an official liquidator, see *Reg. v. Curzon*, 46 L. T. (n.s.) 159; 30 W. R. 521; 47 J. P. 37. Where the liquidator of a company was inserted in the rate book as owner and occupier, and did not appeal against the rate, but made default in payment, it was held that the justices were right in issuing a distress warrant against him, as the rate was good on the face of it. *Dent v. Commendale Overseers*, 56 J. P. 519.

or other person shall have the same rights of priority as the person to whom such payment is made.^(a) **Appendix.**

(5.) This section, as far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

(6.) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

II. (1.) Nothing in this Act shall alter the effect of section five of the Act Savings, twenty-eight and twenty-nine Victoria, chapter eighty-six, "To amend the law of partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by section one hundred and twenty-five of the Bankruptcy Act, 1883.^(b)

(a) This sub-section is new. The landlord who has distrained within the three months herein mentioned must, out of the proceeds of his distress, pay the rates and other preferential debts mentioned in the section, but he in turn will have the right to be repaid before other creditors.

(b) The 28 & 29 Vict. c. 86, commonly called Bovill's Act, has been wholly repealed and superseded by the Partnership Act, 1890 (53 & 54 Vict. c. 39); but the effect of section 5 of Bovill's Act has been reproduced by sections 2 (3) (d), (e), and 3 of the Act of 1890. By section 2, in determining whether a partnership does or does not exist, regard shall be had to the following rules:—(3) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—(d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing and signed by or on behalf of all the parties thereto; (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not, by reason only of such receipt, a partner in the business or liable as such. And by section 3 of the same Act, in the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan; and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. But this section does not deprive the lender of his right to retain any security he may have taken for his money, nor to foreclose his security. *Ex parte Shiel*, 4 Ch. D. 789; 46 L. J. Bkey. 62; 36 L. T. (n.s.) 270; 25 W. R. 420; *Badeley v. The Consolidated Bank*, 34 Ch. D. 536; 55 L. T. (n.s.) 635; 35 W. R. 136.

The Friendly Societies Act, 1875, section 15, sub-section (7), provides as follows:—Upon the death, or bankruptcy, or insolvency of any officer of a society (or branch), having in his possession by virtue of his office any money or property belonging to the society (or branch), or if any execution, attachment, or other process be issued, or action or diligence raised against such officer, or against his property, his heirs, executors, or administrators, or trustee in bankruptcy or insolvency, or the sheriff or other person executing such process, or the party using such action or diligence respectively shall, upon demand in writing of the trustees of the society (or branch) or any two of them, or any person authorized by the society (or branch), or by the committee of management of the same, to make such demand, pay such money and deliver over such property to the trustee of the society (or branch) in preference to any other debts or claims against the estate of such officer. Upon the bankruptcy of an officer of a friendly society, the trustees are, under this sub-section, entitled to preferential payment of sums received by him by virtue of his office, notwithstanding that these sums cannot be specifically traced, and are not at the time of the bankruptcy in his actual possession. *In re Miller, Ex parte Official Receiver* [1893], 1 Q. B. 327; 62 L. J. Q. B. 324; 68 L. T. (n.s.) 367; 41 W. R. 243; 57 J. P. 469; 10 Morrell Bkey. Rep. 21; 4 R. 256.

The Bankruptcy Act, 1883, section 125, sub-section (7), provides as follows:—In the administration of the property of the deceased debtor under an order of administration,

Appendix.(2.) Nothing in this Act shall affect the provisions of the Stannaries Act, 1887.^(a)50 & 51 Vict.
c. 44.Application of
Act.

III. This Act shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made and windings-up commenced after the commencement of this Act.

Extent of Act.

IV. This Act shall not apply to Ireland.

Commencement
of Act.

V. This Act shall commence and come into operation from and immediately after the last day of December, one thousand eight hundred and eighty-eight.

Repeal.

VI. The enactments specified in the schedule hereto are hereby repealed to the extent in the third column of that schedule mentioned.

Short title.

VII. This Act may be cited as the Preferential Payments in Bankruptcy Act, 1888.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title.	Extent of repeal.
46 & 47 Vict. c. 28	- The Companies Act, 1883	The whole Act, except as regards its application to Ireland.
46 & 47 Vict. c. 52	- The Bankruptcy Act, 1883	Section forty, sub-sections one and two.
49 & 50 Vict. c. 28	- The Bankruptcy (Agricultural Labourers' Wages) Act, 1886.	The whole Act.

the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(a) The Stannaries Act, 1887 (50 & 51 Vict. c. 43), contains provisions giving wages priority in the payment of debts due by the company.

Appendix.

THE SALE OF HORSEFLESH, &c., REGULATION ACT, 1889.

(52 & 53 VICT. CAP. 11.)

An Act to regulate the Sale of Horseflesh for Human Food. [24th June, 1889.]

WHEREAS it is desirable to make regulations with respect to the sale of horseflesh for human food :

I. No person shall sell, offer, expose, or keep for sale any horseflesh for human food, (b) elsewhere than in a shop, stall, or place over or upon which there shall be at all times painted, posted, or placed in legible characters of not less than four inches in length, and in a conspicuous position, and so as to be visible throughout the whole time, whether by night or day, during which such horseflesh is being offered or exposed for sale, words indicating that horseflesh is sold there. Signs on horseflesh shops.

II. No person shall supply horseflesh for human food to any purchaser who has asked to be supplied with some meat other than horseflesh, or with some compound article of food which is not ordinarily made of horseflesh. Horseflesh not to be sold as other meat.

III. Any medical officer of health or inspector of nuisances, or other officer of a local authority, acting on the instructions of such authority, or appointed by such authority for the purposes of this Act, may, at all reasonable times, inspect and examine any meat which he has reason to believe to be horseflesh, exposed for sale or deposited for the purposes of sale, or of preparation for sale, and intended for human food, in any place other than such shop, stall, or place as aforesaid, and if such meat appears to him to be horseflesh, he may seize and carry away or cause to be seized and carried away the same, in order to have the same dealt with by a justice as hereinafter provided. (c) Power of medical officer of health to inspect meat, &c.

IV. On complaint made on oath by a medical officer of health or inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building, or part of a building other than such shop, stall, or place as aforesaid, in which such officer has reason for believing that there is kept or concealed any horseflesh which is intended for sale, or for preparation for sale for human food, contrary to the provisions of this Act; and to search for, seize, and carry away, or cause to be seized and carried away, any meat that appears to such officer to be such horseflesh, in order to have the same dealt with by a justice as hereinafter provided. (c)

Any person who shall obstruct any such officer in the performance of his duty under this Act shall be deemed to have committed an offence under this Act. (d)

V. If it appears to any justice that any meat seized under the foregoing provisions of this Act is such horseflesh as aforesaid, he may make such order with regard to the disposal thereof as he may think desirable; (e) and the person in whose possession or on whose premises the meat was found, shall be deemed to have committed an offence under this Act, unless he proves that such meat was not intended for human food, contrary to the provisions of this Act. (f) Power of justice with reference to disposal of horseflesh.

VI. Any person offending against any of the provisions of this Act, for every such offence shall be liable to a penalty not exceeding twenty pounds, to be recovered in a summary manner; (g) and if any horseflesh is proved to have been exposed for

(b) This Act applies only to the sale of horseflesh for human food.

(c) See section 5, *post*.

(d) For the penalty for this offence, see section 6, *post*.

(e) The order is left to the discretion of the justice. He may order the meat to be destroyed, or he may order it to be sold for the food of dogs or the like.

(f) It will be for the defendant to prove that the meat was not intended for human food.

(g) That is to say, before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts. 42 & 43 Vict. c. 49, s. 51.

Appendix.	sale to the public in any shop, stall, or eating house,(a) other than such shop, stall, or place as in the first section mentioned, without anything to show that it was not intended for sale for human food, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.
Definition of "horseflesh."	VII. For the purposes of this Act "horseflesh" shall include the flesh of asses and mules, and shall mean horseflesh, cooked or uncooked, alone or accompanied by or mixed with any other substance.
Local authority for purposes of Act.	VIII. For the purposes of this Act the local authorities shall be, in the city of London and the liberties thereof, the Commissioners of Sewers, and in the other parts of the county of London the vestries and district boards acting in the execution of the Metropolis Local Management Acts, and in other parts of England, the urban and rural sanitary authorities.(b)
	* * * * *
Short title.	X. This Act may be cited as the Sale of Horseflesh, &c., Regulation Act, 1889.
Commencement of Act.	XI. This Act shall come into operation on the twenty-ninth day of September, one thousand eight hundred and eighty-nine.

THE TOWN POLICE CLAUSES ACT, 1889.
(52 & 53 VICT. CAP. 14.)

An Act to amend the provisions relating to Hackney Carriages of the Town Police Clauses Act, 1847. [24th June, 1889.]

10 & 11 Vict. c. 89.	WHEREAS it is expedient to amend the provisions with respect to hackney carriages of the Town Police Clauses Act, 1847, in this Act called the principal Act:
	* * * * *
Short title.	I. This Act may be cited as the Town Police Clauses Act, 1889, and this Act and the Town Police Clauses Act, 1847, may be cited together as the Town Police Clauses Acts, 1847 and 1889.(c)
10 & 11 Vict. c. 89.	
Construction of Act.	II. (1.) This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to mean the principal Act as amended by this Act.
33 & 39 Vict. c. 55.	(2.) This Act shall be deemed to be incorporated with the Public Health Act, 1875, by section one hundred and seventy-one of that Act.(d)
Defining "omnibus."	III. The term "omnibus," where used in this Act, shall include— Every omnibus, char-a-banc, wagonette, brake, stage coach, and other carriage plying or standing for hire by or used to carry passengers at separate fares to, from, or in any part of the prescribed distance ;(e) but shall not include—
33 & 34 Vict. c. 78.	Any tram car or tram carriage duly licensed under the provisions of the Tramways

(a) The reference to an eating-house, and the definition in section 7, shows that the Act is intended to apply not only to sales of horseflesh as butchers' meat, but to its sale as beef in an eating-house or restaurant.

(b) The remainder of this section relates only to Ireland, and section 9 relates only to Scotland.

(c) The Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), in so far as it is incorporated with the Public Health Act, 1875, is set out, *ante*, p. 907.

(d) See this section, *ante*, p. 235.

(e) The prescribed distance means within the urban district. See section 171 of the Public Health Act, 1875, *ante*, p. 235.

Act, 1870, or of any provisional order made thereunder and confirmed by Parliament, or under the provisions of any local Act of Parliament: **Appendix.**

Any carriage starting from and previously hired for the particular passengers thereby carried at any livery stable yard (within the prescribed distance) whereat horses are stabled and carriages let for hire, the said carriage starting from the said stable yard and being *bonâ fide* the property of the occupier thereof, and not standing or plying for hire^(f) within the prescribed distance:

Any omnibus belonging to or hired or used by any railway company for conveying passengers and their luggage to or from any railway station of that company, and not standing or plying for hire within the prescribed distance: ^(g)

Any omnibus starting from outside the prescribed distance, and bringing passengers within the prescribed distance, and not standing or plying for hire within the prescribed distance. ^(h)

IV. (1.) The several terms "hackney carriages," "hackney coach," "carriages," and "carriage," whenever used in sections thirty-seven, forty to fifty-two (both inclusive), fifty-four, fifty-eight, and sixty to sixty-seven (both inclusive) of the principal Act shall, notwithstanding anything contained in section thirty-eight of that Act, be deemed to include every omnibus. ⁽ⁱ⁾ Extending certain provisions of principal Act to omnibuses.

(2.) The word "driver" or "drivers" when used in any of the said sections of the principal Act shall be deemed to include every conductor of any omnibus.

(3.) For the purposes of sections fifty-four, fifty-eight, and sixty-six of the principal Act, the fare, according to the statement of fares exhibited on any omnibus, shall be deemed to be the fare allowed by the principal Act or authorised by any bye-law under that Act.

V. Any license may be granted under the principal Act to continue in force for such less period than one year as the commissioners may think fit, and shall specify in the license. Licenses may be granted for short periods.

VI. The commissioners may from time to time make bye-laws for all or any of the following purposes, that is to say:—

For regulating the conduct of the proprietors, drivers, and conductors of omnibuses plying within the prescribed distance in their several employments, and determining whether such drivers and conductors shall wear any and what badges:

(f) As to what amounts to standing or plying for hire, reference may be made to the cases cited in the notes to 10 & 11 Vict. c. 89, s. 38, *ante*, p. 916. It is important to observe that the words are not, as in the older Act, "standing or plying for hire in a street." An omnibus may, therefore, be standing or plying for hire while it is on private property, such as a railway station. See *Clarke v. Stanford*, L. R. 6 Q. B. 357; 40 L. J. M. C. 151; 24 L. T. (N.S.) 389; 19 W. R. 846; 35 J. P. 662; *Allen v. Tambridge*, L. R. 6 C. P. 481; 40 L. J. M. C. 197; 24 L. T. (N.S.) 796; 19 W. R. 849; 35 J. P. 695; *Foinett v. Clark*, 41 J. P. 359; *Skinner v. Usher*, L. R. 7 Q. B. 423; 41 L. J. M. C. 158; 26 L. T. (N.S.) 430; 20 W. R. 659; 36 J. P. 693; *Curtis v. Embery*, L. R. 7 Ex. 369; 42 L. J. M. C. 39; 21 W. R. 143.

(g) It seems to follow from these words that to be within this exception the omnibus must not be allowed to stand about for hire by anyone who may desire to use it, for it would then be standing or plying for hire; and that unless the Act is to apply the omnibus must be hired before it is brought out.

(h) This exception will apply where there are adjoining urban districts. An omnibus licensed in one will not require to be licensed in the other, though used for bringing passengers into the latter, unless it stands or plies for hire in the latter. An omnibus starting from outside the district and going to a point within the district where it waited from fifteen to twenty minutes for the purpose of taking up passengers, parcels, &c., for the return journey, was held not to come within the exception on the ground that it plied for hire within the district. *Dewhurst v. Eddles*, 57 J. P. 373; 9 T. L. R. 494.

(i) See these sections, *ante*, pp. 919—922.

Appendix.

For regulating the manner in which the number of each omnibus corresponding with the number of its license shall be displayed :

For regulating the number of persons to be carried by such omnibus, and in what manner such number is to be shown thereon :

For regulating the number and securing the fitness of the animals to be allowed to draw an omnibus, and for the removal therefrom of unfit animals :

For securing the fitness of the omnibus and the harness of the animals drawing the same :

For fixing the stands for omnibuses and the points at which they may stop a longer time than is necessary for the taking up and setting down of passengers desirous of entering or leaving the same :

For securing the safe custody and re-delivery of any property accidentally left in any omnibus, and fixing the charge to be made in respect thereof : (a)

To provide for the carrying and the lighting of proper lamps for denoting the direction in which the omnibus is proceeding, and promoting the safety and convenience of the passengers carried thereby :

To provide for the exhibition on some conspicuous part of every omnibus of a statement in legible letters and figures of the fares to be demanded and received from the persons using or carried for hire in such omnibus :

To prevent within the prescribed distance—

(a.) The owner, driver, or conductor of any omnibus, or any other person on their or his behalf, by touting, calling out, or otherwise, from importuning any person to use or to be carried for hire in such omnibus, to the annoyance of such person or of any other person :

(b.) The blowing of or playing upon horns or other musical instruments, or the ringing of bells, by the driver or conductor of any omnibus, or by any person travelling on or using any such omnibus.

Provided that nothing in this Act contained shall empower the commissioners to fix the site of the stand of any omnibus in any railway station, or in any yard adjoining or connected therewith, except with the consent of the railway company owning such site.

THE ARBITRATION ACT, 1889.

(52 & 53 VICT. CAP. 49.) (b)

An Act for amending and consolidating the Enactments relating to Arbitration.

[26th August, 1819.]

* * * * *

References by Consent out of Court.

Submission to be irrevocable and to have effect as an order of court.

I. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court. (c)

(a) Up to this point there is little difference between the provisions of this section and those of 10 & 11 Vict. c. 89, s. 68, *ante*, p. 922. The bye-laws under this section do not regulate the hours of employment, but, on the other hand, they may regulate the fitness of the horses and harness. The rest of the section is new.

(b) The reason for the insertion of the above Act in this Appendix is that, by section 24, it applies to arbitrations under the Public Health Acts, save in so far as its provisions are inconsistent with those of section 180 of the Public Health Act, 1875, *ante*, p. 251. The notes are limited to an indication of the sections which do not apply to such arbitrations and to references to the chief decisions upon the Act.

(c) Where there is an agreement to refer to three arbitrators, one to be appointed by each party and one by the two arbitrators so appointed, the court has no power implied from this section to order a party to appoint an arbitrator. *In re Smith and Service and Nelson and Sons*, 25 Q. B. D. 545 ; 59 L. J. Q. B. 533 ; 63 L. T. (N.S.) 475 ; 39 W. R. 117 ;

II. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission. (d)

Appendix.
Provisions implied in submissions.
Reference to official referee.

III. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred. (e)

IV. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. (f)

Power to stay proceedings where there is a submission.

V. In any of the following cases:—

(a.) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator: (g)

(b.) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy: (h)

(c.) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him: (i)

(d.) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy: (i)

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

6 T. L. R. 434. As to revocation on account of bias, see *In re Baring and Doulton*, 61 L. J. Q. B. 704; *Eckersley v. Mersey Docks and Harbour Board* [1894], 2 Q. B. 667.

(d) See the notes to the Schedule, *post*. This section was held to apply to all submissions, whether made before or after the passing of this Act. *In re Williams and Stepney* [1891], 2 Q. B. 257; 60 L. J. Q. B. 636; 65 L. T. (N.S.) 208; 32 W. R. 533; 7 T. L. R. 577.

(e) This section cannot apply to arbitrations under the Public Health Acts.

(f) The court has a discretion to stay under this section. *In re Carlisle, Clegg v. Clegg*, 44 Ch. D. 200; 59 L. J. Ch. 520; 62 L. T. (N.S.) 821; 38 W. R. 638. As to what amounts to a step in the proceedings, see *Chappell v. North* [1891], 2 Q. B. 252; 60 L. J. Q. B. 554; 65 L. T. (N.S.) 23; 40 W. R. 16; 7 T. L. R. 563; *Brighton Marine Palace Company v. Woodhouse* [1893], 2 Ch. 486; 62 L. J. Ch. 697; 68 L. T. 669; 41 W. R. 488; 3 R. 565; *Ives v. Williams* [1894], 2 Ch. 478; 63 L. J. Ch. 521; 70 L. T. (N.S.) 674; 42 W. R. 483; *Adams v. Cutley*, 66 L. T. (N.S.) 687; 40 W. R. 570; *Bartlett v. Ford's Hotel Company* [1895], 1 Q. B. 850; 64 L. J. Q. B. 452; 72 L. T. (N.S.) 529; 43 W. R. 453; 59 J. P. 437, affirmed in H. L., W. N. (95) 153 (10); 30 L. J. Notes, 723. Where a receiver is appointed, an order may be made staying all proceedings, except for the purpose of carrying out the order for a receiver. *Pini v. Roncoroni* [1892], 1 Ch. 633; 61 L. J. Ch. 218; 66 L. T. (N.S.) 255; 40 W. R. 297.

This section has no application to arbitrations under the Public Health Act, 1875, s. 180, but it will apply to arbitration clauses in contracts with sanitary authorities. See *Nuttall v. Manchester (Mayor, &c. of)*, 8 T. L. R. 513.

(g) This cannot apply to arbitrations under sections 179 and 180 of the Public Health Act, 1875.

(h) This cannot apply. See section 180, sub-sections (4), (5), (6), (7), *ante*, p. 251. See as to the effect of the clause *In re Wilson and The Eastern Counties Navigation and Transport Company* [1892], 1 Q. B. 81; 61 L. J. Q. B. 237; 65 L. T. (N.S.) 853.

(i) This cannot apply. See section 180, sub-section (7), *ante*, p. 252.

Appendix.

If the appointment is not made within seven clear days after the service of the notice, the court or a judge may,^(a) on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

VI. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

- (a.) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place :^(b)
- (b.) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :^(b)

Provided that the court or a judge may set aside any appointment made in pursuance of this section.^(c)

Powers of arbitrator.

VII. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention have power—

- (a.) To administer oaths to or take the affirmations of the parties and witnesses appearing ;^(d) and
- (b.) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court ;^(e) and
- (c.) To correct in an award any clerical mistake or error arising from any accidental slip or omission.^(e)

Witnesses may be summoned by subpoena.

VIII. Any party to a submission may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.^(e)

Power to enlarge time for making award.

IX. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.^(f)

Power to remit award.

X. (1.) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order

(a) In ordinary cases this is equivalent to *must*. *In re Eyre and the Corporation of Leicester* [1892], 1 Q. B. 136 ; 61 L. J. Q. B. 438 ; 65 L. T. (N.S.) 733 ; 40 W. R. 203 ; 56 J. P. 228.

(b) A similar provision is contained in section 180, sub-section (5), *ante*, p. 251.

(c) An appointment under section 180, sub-section (5), will not, apparently, be made in pursuance of this section, though the effect of the two provisions is similar.

(d) See section 180, sub-section (12), *ante*, p. 252.

(e) This provision will apply to an arbitration under section 180. An appeal lies to the Court of Appeal from a decision of the High Court upon an award stated as a special case. *In re Kirkcathlam Local Board and Stockton and Middlesbrough Water Board* [1893], 1 Q. B. 375 ; 62 L. J. Q. B. 180 ; 67 L. T. (N.S.) 811 ; 57 J. P. 421 ; 4 R. 194.

(f) It seems doubtful whether this section enables the court to enlarge the time beyond the two months limited by section 180, sub-section (9). See the notes to that sub-section, *ante*, p. 254.

otherwise directs, make their award within three months after the date of the order.^(g) **Appendix.**

XI. (1.) Where an arbitrator or umpire has misconducted himself, the court may remove him. Power to set aside award.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.^(h)

XII. An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect.⁽ⁱ⁾ Enforcing award.

References under Order of Court.^(k)

XIII. (1.) Subject to Rules of Court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee. Reference for report.

(2.) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

XIV. In any cause or matter (other than a criminal proceeding by the Crown)— Power to refer in certain cases.

(a.) If all the parties interested who are not under disability consent; or

(b.) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers; or

(c.) If the question in dispute consists wholly or in part of matters of account,^(l) the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.^(m)

XV. (1.) In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court,⁽ⁿ⁾ and subject thereto as the court or a judge may direct. Powers and remuneration of referees and arbitrators.

^(g) This section will, apparently, apply to an arbitration under section 180. The court may, under this section, remit an award upon the ground that fresh evidence has been discovered since the award was made, although the arbitrator does not join in asking the court to remit it. Such evidence need not be strictly legal evidence, though it must be such as may affect the arbitrator's decision. *In re Keighley and Durant* [1893], 1 Q. B. 405; 62 L. J. Q. B. 105; 68 L. T. (N.S.) 61; 41 W. R. 437; 4 R. 136; 7 Asp. M. C. 268.

^(h) As to misconduct, see *In re Kenworthy and Queen Insurance Company*, 9 T. L. R. 181; *In re Gregson and Armstrong*, 70 L. T. (N.S.) 106; 10 R. 408.

⁽ⁱ⁾ This section will also apply as it affords another remedy in addition to that given by section 180, sub-section (14), *ante*, p. 252.

^(k) The sections in this part of the Act apply only to references by the court, and not to arbitrations under section 180 of the Public Health Act, 1875. They will, however, apply to actions by or against sanitary authorities.

^(l) This applies where the main, although not the only question in dispute, is a matter of account. *Hurlbatt v. Barnett* [1893], 1 Q. B. 77; 62 L. J. Q. B. 1; 67 L. T. (N.S.) 818; 41 W. R. 33.

^(m) Where an action has been referred for trial under this section, the court or a judge still retains the power, and the referee or arbitrator has also jurisdiction, to order inspection of property. As a general rule, the most convenient course is to apply to the referee or arbitrator in the first instance. *Macalpine v. Calder* [1893], 1 Q. B. 545; 62 L. J. Q. B. 607; 68 L. T. (N.S.) 426; 41 W. R. 436; 4 R. 314. An appeal lies to the Court of Appeal (without leave) from an order of the High Court refusing to order a new trial. *Munday v. Norton* [1892], 1 Q. B. 403; 61 L. J. Q. B. 456; 66 L. T. (N.S.) 173; 40 W. R. 355.

⁽ⁿ⁾ See R. S. C., O. 36, rule 45 *et seq.*

Appendix.

(2.) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.(a)

(3.) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge shall be determined by the court or a judge.(b)

Court to have powers as in reference by consent.

XVI. The court or a judge shall, as to references under order of the court or a judge, have all the powers which are by this Act conferred on the court or a judge as to references by consent out of the court.

Court of Appeal to have powers of court.

XVII. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the court or a judge thereof under the provisions relating to references under order of the court.

General.

Power to compel attendance of witness in any part of the United Kingdom, and to order *habeas corpus* to issue.

XVIII. (1.) The court or a judge may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire of a witness wherever he may be within the United Kingdom.

(2.) The court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.(c)

Statement of case pending arbitration.

XIX. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.(d)

Costs.

XX. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.(e)

Exercise of powers by masters and other officers.

XXI. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on a court or a judge.(f)

Penalty for perjury.

XXII. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.(g)

(a) As to the power of the court under this sub-section, see *Darlington Waggon Company v. Harding and Trouville Pier and Steamboat Company* [1891], 1 Q. B. 245; 60 L. J. Q. B. 110; 64 L. T. (N.S.) 409; 39 W. R. 167; 7 T. L. R. 106.

(b) As to the right of the arbitrator to recover fees, see *Willis v. Wakeley*, 7 T. L. R. 604.

(c) This section will apply to arbitrations under the Public Health Act, 1875, s. 180.

(d) This section will apply to arbitrations under the Public Health Act, 1875. See the judgments in *Sandgate Local Board v. Keene* [1892], 1 Q. B. 831. Appeal does not lie to the Court of Appeal from the decision of the court on a case stated under this section. *In re Knight and Tabernacle Permanent Building Society* [1892], 2 Q. B. 613; 62 L. J. Q. B. 33; 67 L. T. (N.S.) 403; 41 W. R. 35. As to the power to order a case to be stated, see *Tabernacle Permanent Building Society and Knight*, W. N. (1892) p. 98. In the case of *In re Kent County Council and Sandgate Local Board* [1895], 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.) 725; 43 W. R. 601; 59 J. P. 456; 11 T. L. R. 421, it was held that the court have power to require an arbitrator appointed by the Local Government Board in an arbitration under s. 11 (3) of the Local Government Act, 1888, to state a special case under this section. The fact of there being a question of law to be decided is not sufficient ground for a case to be ordered unless there is some evidence that the arbitrators are going beyond their jurisdiction, or are about to act contrary to law. *In re Gray and Company and Boustead and Company*, 8 T. L. R. 703.

(e) See *Knight and the Tabernacle Permanent Building Society*, *supra*, and R. S. C., O. 65.

(f) See R. S. C., O. 54, r. 12A.

(g) This will apply to arbitrations under section 180. If the evidence be merely pre-

XXIII. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in the right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown. **Appendix.**
Crown to be bound.

XXIV. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration was pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act (*h*). **Application of Act to references under statutory powers.**

XXV. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act. **Saving for pending arbitrations.**

XXVI. (1.) The enactments described in the Second Schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability. **Repeal.**

(2.) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

XXVII. In this Act, unless the contrary intention appears,—

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. (*i*) **Definitions.**

“Court” means Her Majesty’s High Court of Justice.

“Judge” means a Judge of Her Majesty’s High Court of Justice.

“Rules of Court” means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

XXVIII. This Act shall not extend to Scotland or Ireland. **Extent.**

XXIX. This Act shall commence and come into operation on the first day of January, one thousand eight hundred and ninety. **Commencement.**

XXX. This Act may be cited as the Arbitration Act, 1889. **Short title.**

pared, though not used, it is an indictable misdemeanour. *Reg. v. Vreones* [1891], 1 Q. B. 360; 60 L. J. M. C. 62; 64 L. T. (N.S.) 389; 39 W. R. 365; 55 J. P. 536; 17 Cox, C. C. 267; 7 T. L. R. 223.

(*h*) For the effect of this section, see note (*b*), *ante*, p. 1262.

(*i*) The appointment of the arbitrators under section 180 of the Public Health Act, 1875, is to be deemed a submission. See sub-section (2) of that section, *ante*, p. 251.

For the construction of this definition, see *Caerleon Tinplate Company v. Hughes*, 60 L. J. Q. B. 640; 65 L. T. (N.S.) 118; 7 T. L. R. 619; *Baker v. Yorkshire Fire and Life Assurance Company* [1892], 1 Q. B. 144; 61 L. J. Q. B. 838; 66 L. T. (N.S.) 161; *Aitken v. Batchelor*, 62 L. J. Q. B. 193; 68 L. T. (N.S.) 530; 5 T. R. 218; 9 T. L. R. 221.

Appendix.

SCHEDULES.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.^(a)

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.^(a)

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.^(b)

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.^(c)

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.^(d)

f. The parties to the reference and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.^(e)

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.^(e)

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.^(f)

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.^(g)

^(a) This clause does not apply to arbitrations under the Public Health Act, 1875, having regard to sections 179 and 180, sub-section (7).

^(b) This clause does not apply having regard to section 180, sub-sections (8) and (9).

^(c) See section 180, sub-section (8), and the note thereto, *ante*, p. 253.

^(d) This clause does not apply. See section 180, sub-section (9), and the note thereto, *ante*, p. 254.

^(e) These clauses slightly extend the powers conferred by section 180, sub-section (12).

^(f) See similar provisions in section 180, sub-section (15).

^(g) This extends the powers given to the arbitrators by section 180, sub-section (13).

The amount of the costs must be stated in the award, otherwise the costs of the reference and award, including the arbitrator's fees, are liable to taxation in the ordinary course. *In re Prebble and Robinson* [1892], 2 Q. B. 602; 67 L. T. (N.S.) 267; 41 W. R. 30; 57 J. P. 54. Where a whole cause is referred to a special referee for trial, and the referee awards that one of the parties recover against the other the costs of the action, such costs include the costs of the reference. *Patten v. West of England Iron, Timber, and Charcoal Company* [1894], 2 Q. B. 159; 63 L. J. Q. B. 757; 70 L. T. (N.S.) 908; 42 W. R. 522; 58 J. P. 400; 10 R. 285.

THE SECOND SCHEDULE.

Appendix.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
9 Will. 3, c. 15 -	An Act for determining differences by arbitration.	The whole Act.
4 & 5 Will. 4, c. 42	An Act for the further amendment of the law and the better advancement of justice.	Sections thirty-nine to forty-one, both inclusive.
17 & 18 Vict. c. 125	The Common Law Procedure Act, 1854.	Sections three to seventeen, both inclusive.
36 & 37 Vict. c. 66	The Supreme Court of Judicature Act, 1873.	Section fifty-six, from "Subject to any Rules of Court" down to "as a judgment by the court," both inclusive, and the words "special referees or." Sections fifty-seven to fifty-nine, both inclusive.
47 & 48 Vict. c. 61	The Supreme Court of Judicature Act, 1884.	Sections nine to eleven, both inclusive.

THE TECHNICAL INSTRUCTION ACT, 1889.

(52 & 53 VICT. CAP. 76.)(h)

An Act to facilitate the Provision of Technical Instruction. [30th August, 1889.]

* * * * *

I. (1.) A local authority⁽ⁱ⁾ may from time to time out of the local rate^(k) supply or aid the supply of technical or manual instruction,^(l) to such extent and on such terms as the authority think expedient, subject to the following restrictions, namely :—

Power for local authority to supply or aid the supply of technical instruction.

- (a.) The local authority shall not out of the local rate supply or aid the supply of technical or manual instruction to scholars receiving instruction at an elementary school in the obligatory or standard subjects prescribed by the minutes of the Education Department for the time being in force ;^(m)

(h) This Act is amended by 54 & 55 Vict. c. 4, *post*. See also 55 & 56 Vict. c. 29, *post*.

(i) The expression "local authority" includes an urban sanitary authority. See section 4, *post*.

(k) As to the local rate, see section 4, *post*.

(l) For the definition of technical and manual instruction, see section 8, *post*. Under 54 & 55 Vict. c. 4, s. 1, *post*, the local authority may make provision in aid of technical instruction outside their district, and may provide scholarships or pay fees for students of their own district.

(m) As to what are standard subjects as distinguished from class subjects, see the Education Code and Schedules. The object of this restriction appears to be to prevent a vote in aid of technical education for children who are insufficiently educated.

Appendix.

- (b.) It shall not be required as a condition of any scholar being admitted into or continuing in any school aided out of the local rate, and receiving technical or manual instruction under this Act, that he shall attend at or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere: Provided that in any school the erection of which has been aided under this Act, it shall not be required, as a condition of any scholar being admitted into or continuing in such school, that he shall attend at or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere;
- (c.) No religious catechism or religious formulary, which is distinctive of any particular denomination, shall be taught at any school aided out of the local rate, to a scholar attending only for the purposes of technical or manual instruction under this Act, and the times for prayer or religious worship, or for any lesson or series of lessons on a religious subject, shall be conveniently arranged for the purpose of allowing the withdrawal of such scholar therefrom;
- (d.) A local authority may, on the request of the school board for its district or any part of its district, or of any other managers of a school or institution within its district for the time being in receipt of aid from the Department of Science and Art, make out of any local rate, raised in pursuance of this Act, to such extent as may be reasonably sufficient, having regard to the requirements of the district, but subject to the conditions and restrictions contained in this section, (a) provision in aid of the technical and manual instruction for the time being supplied in schools or institutions within its district, and shall distribute the provision so made in proportion to the nature and amount of efficient technical and manual instruction supplied by those schools or institutions respectively; (b)
- (e.) Where such other managers of a school or institution receive aid from a local authority in pursuance of this section, the local authority shall, for the purposes of this Act, be represented on the governing body of the school or institution in such proportion as will, as nearly as may be, correspond to the proportion which the aid given by the local authority bears to the contribution made from all sources other than the local rate and money provided by Parliament to the cost of the technical or manual instruction given in the school or institution aided;
- (f.) If the question arises as to the sufficiency of the provision made under this section, or as to the qualification of any school or institution to participate in any such provision, or as to the amount to be allotted to each school or institution, or as to the extent to which, or mode in which, the local authority is to be represented on the governing body of any such school or institution, the question shall be determined by the Department of Science and Art: Provided that no such provision, out of any rate raised in pursuance of this Act, shall be made in aid of technical and manual instruction in any school conducted for private profit; and
- (g.) The amount of the rate to be raised in any one year by a local authority for the purposes of this Act shall not exceed the sum of one penny in the pound. (c)

(2.) A local authority may, for the purposes of this Act, appoint a committee consisting either wholly or partly of members of the local authority, and may delegate

(a) See especially restriction (a) as to children receiving instruction in standard subjects; see also the proviso to clause (f), *infra*.

(b) This is modified by 54 Vict. c. 4, s. 1, sub-sect. (2), *post*. The local authority may now make the distribution according to all the circumstances of the case.

(c) No rate is really raised for the purposes of the Act. The contribution is paid out of the local rate. The effect of this restriction, however, is to limit the amount of the contribution.

to any such committee any powers exercisable by the authority under this Act, **Appendix.**
except the power of raising a rate or borrowing money.

(3.) Nothing in this Act shall be construed so as to interfere with any existing powers of school boards with respect to the provision of technical and manual instruction.

II. It shall be competent for any school board or local authority, should they think fit, to institute an entrance examination for persons desirous of attending technical schools or classes under their management or to which they contribute. Provision for entrance examination.

III. The conditions on which parliamentary grants may be made in aid of technical or manual instruction shall be those contained in the minutes of the Department of Science and Art in force for the time being. Parliamentary grants in aid of technical instruction.

IV. (1.) For the purposes of this Act the expression "local authority" shall mean the council of any county or borough, and any urban sanitary authority within the meaning of the Public Health Acts. Provisions as to local authorities.

(2.) The local rate for the purposes of this Act shall be—

(a.) In the case of a county council, the county fund;

(b.) In the case of a borough council, the borough fund or borough rate;

(c.) In the case of an urban sanitary authority not being a borough council, the district fund and general district rate, or other fund or rate applicable to the general purposes of the Public Health Acts; (d)

(3.) A county council may charge any expenses incurred by them under this Act on any part of their county for the requirements of which such expenses have been incurred.

(4.) A local authority may borrow for the purposes of this Act—

(a.) In the case of a county council, in manner provided by the Local Government Act, 1888; 51 & 52 Vict. c. 41.

(b.) In the case of a borough council, as if the purposes of this Act were purposes for which they are authorized by section one hundred and six of the Municipal Corporations Act, 1882, to borrow; (e)

(c.) In the case of an urban sanitary authority not being a borough council, as if the purposes of this Act were purposes for which they are authorized to borrow under the Public Health Acts. (f) 45 & 46 Vict. c. 50.

V. Where the managers of a school or institution receive aid from a local authority in pursuance of this Act, they shall render to the local authority such accounts relating to the application of the money granted in aid, and those accounts shall be verified and audited in such manner as the local authority may require, and the managers shall be personally liable to refund to the local authority any money granted under this Act, and not shown to be properly applied for the purposes for which it was granted. Audit of accounts of aided schools.

VI. The accounts of the receipts and expenditure of an urban sanitary authority under this Act shall be audited in like manner and with the like incidents and consequences as the accounts of their receipts and expenditure under the Public Health Act, 1875. (g) Audit of accounts of urban sanitary authority.

VII. [*Application of the Act to Ireland.*]

(d) As to the general district fund and rate, see sections 209—211 of the Public Health Act, 1875, *ante*, p. 278.

(e) Under 45 & 46 Vict. c. 50, s. 106, a borough council may, with the consent of the Local Government Board (51 & 52 Vict. c. 41, s. 72), borrow on the security of any corporate land, or of the borough fund or rate.

(f) As to the power to borrow under the Public Health Acts, see the Act of 1875, sections 233—243, *ante*, p. 314.

(g) The clauses as to the audit are sections 245—250, *ante*, p. 325.

Appendix.

Meaning of
technical
and manual
instruction.

VIII. In this Act—

The expression “technical instruction” shall mean instruction in the principles of science and art applicable to industries, and in the application of special branches of science and art to specific industries or employments. It shall not include teaching the practice of any trade, or industry, or employment, but, save as aforesaid, shall include instruction in the branches of science and art with respect to which grants are, for the time being, made by the Department of Science and Art, and any other form of instruction (including modern languages and commercial and agricultural subjects), which may, for the time being, be sanctioned by that department by a minute laid before Parliament, and made on the representation of a local authority, that such a form of instruction is required by the circumstances of its district.

The expression “manual instruction” shall mean instruction in the use of tools, processes of agriculture, and modelling in clay, wood, or other material.

Extent of Act.

IX. This Act shall not extend to Scotland.

Short title.

X. This Act may be cited as the Technical Instruction Act, 1889.

THE CUSTOMS AND INLAND REVENUE ACT, 1890.

(53 & 54 VICT. CAP. 8.)

An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

[9th June, 1890.]

Most Gracious Sovereign,

WE, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as the Customs and Inland Revenue Act, 1890.

* * * * *

Inhabited house
duty reduced as
respects houses
of small annual
value.

XXV. (1.) From and after the fifth day of April, one thousand eight hundred and ninety, as respects England the duty payable upon an inhabited dwelling-house under the Act of the fourteenth and fifteenth years of her Majesty's reign, chapter thirty-six, at the rate of sixpence for every twenty shillings of the annual value of the house, with the household and other offices, yards, and gardens therewith occupied is, in case such annual value shall not exceed forty pounds, hereby reduced to the rate of twopence, and is, in case such annual value shall exceed forty pounds and shall not exceed sixty pounds, hereby reduced to the rate of fourpence.

(2.) And from and after the said days respectively the duty payable upon an inhabited dwelling-house under the said Act at the rate of ninepence for every twenty shillings of the annual value of the house, with the household and other offices, yards, and gardens therewith occupied is, in case such annual value shall not exceed forty pounds, hereby reduced to the rate of threepence, and is, in case

such annual value shall exceed forty pounds and shall not exceed sixty pounds, **Appendix.**
hereby reduced to the rate of sixpence.(a)

XXVI. (1.) Where any dwelling-house chargeable to inhabited house duty under the said Act of the fourteenth and fifteenth years of Her Majesty's reign, chapter thirty-six, at the rate of ninepence, or at the reduced rate of sixpence or threepence, according to this Act, for every twenty shillings of annual value is occupied in any year by a person for the main purpose of letting furnished lodgings therein as a means of livelihood, it shall be lawful for such person before the first day of July to register his name in a list of lodging-house keepers to be kept by the clerk to the commissioners acting in the execution of the Acts relating to the inhabited house duties, and after such registration, and before the first day of October, to make application to the said commissioners for the reduction of the rate of charge of inhabited house duty from ninepence to sixpence, or for the further reduction of the reduced rate of sixpence to fourpence, or of threepence to twopence, and on due proof of the facts to the satisfaction of the said commissioners they shall cause the charge or amount for such year to be reduced or amended accordingly.

Reduction of inhabited house duty in the case of lodging-houses and exemption of houses for artisans' dwellings.

(2.) The assessment to inhabited house duty of any house originally built, or adapted by additions or alterations, and used for the sole purpose of providing separate dwellings for persons at rents not exceeding for each dwelling the rate of seven shillings and sixpence a week, and occupied only, by persons paying such rents(b) shall be discharged by the said commissioners, provided that a certificate of the medical officer of health for the district in which the house is situate, or other medical practitioner appointed as hereinafter provided, shall be produced to them to the effect that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. The medical officer of health of a district on request by the person who would be liable to pay the house duty on any house in the district, if the duty were not discharged as aforesaid, shall examine the house for the purpose of ascertaining whether such a certificate can properly be given, and if the house be constructed so as to afford such accommodation and due provision be made as aforesaid, shall certify the same accordingly: Provided that the authority, if they are of opinion that the duties which would devolve on the medical officer of health under this section could not be performed by him without interference with the due performance of his ordinary duties, may appoint some other legally qualified medical practitioner having the qualification required for office of medical officer of health of the district, to make such examinations and give such certificates as aforesaid.(c)

* * * * *

(a) Words relating to Scotland only are omitted from this section. This section has been inserted to explain the next one. Under 14 & 15 Vict. c. 36, inhabited house duty was charged at 6d. in the pound upon houses occupied partly for trade purposes, licensed houses, and farmhouses occupied by a tenant or farm servant. All other houses were charged at 9d. in the pound.

(b) The 54 & 55 Vict. c. 25, s. 4, substitutes for these words, the words "where the annual value of each dwelling shall not amount to twenty pounds." The same section grants an abatement in cases when the separate dwellings do not exceed forty pounds annual value. See this Act, *post*.

(c) This section imposes important duties upon medical officers of health. On the 19th September, 1890, the Local Government Board issued a circular to medical officers calling attention to the section. The following is the text of the circular:—

I am directed by the Local Government Board to draw your attention to the provisions contained in section 26 (2) of the Customs and Inland Revenue Act, 1890, with respect to the exemption of certain houses from inhabited house duty.

The section provides that the assessment to inhabited house duty of any house originally built, or adapted by additions or alterations, and used for the sole purpose of providing separate dwellings for persons at rents not exceeding for each dwelling the rate of seven shillings and sixpence a week, and occupied only by persons paying such rents, is to be discharged by the commissioners acting in the execution of the Acts relating to the inhabited house duties, provided that a certificate is produced to them to the effect that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements.

Appendix.

THE OPEN SPACES ACT, 1890.

(53 & 54 VICT. CAP. 15.)

An Act to amend the Open Spaces Acts.

[25th July, 1890.]

* * * * *

Short title and
construction.
40 & 41 Vict.
c. 35.
44 & 45 Vict.
c. 34.
50 & 51 Vict.
c. 32.

I. This Act may be cited as the Open Spaces Act, 1890, and may be read with the Metropolitan Open Spaces Acts, 1877 and 1881, and the Open Spaces Act, 1887 (hereinafter called the principal Acts), as one Act, and this Act and the principal Acts may be cited as the Open Spaces Acts, 1877 to 1890.(a).

II. In this Act—

Definitions.

The expression “local authority” shall mean and include any of the public bodies who are empowered by the principal Acts to hold open spaces for the purposes of the Open Spaces Acts, 1877 to 1890 : (b)

“The court” shall mean the Chancery Division of the High Court of Justice in England and Ireland, and the county court of the district in which the whole or part of any open space may be situated as herein provided.

Transfer to
local authority
of spaces held
by trustees for
purposes of
public
recreation.

III. The trustees of land held upon trust for the purposes of public recreation may, in pursuance of a resolution duly passed as provided by section two of the Metropolitan Open Spaces Act, 1881,(c) transfer by free gift, absolutely or for a

The certificate is to be obtained from the medical officer of health for the district in which the house is situate, or from some other medical practitioner appointed as hereinafter mentioned.

The Act makes it the duty of the medical officer of health of a district, on request by the person who would be liable to pay the house duty on any house in the district, if the duty were not discharged by the commissioners, to examine the house for the purpose of ascertaining whether a certificate can properly be given ; and if the house is constructed so as to afford suitable accommodation for each of the families or persons inhabiting it, and due provision is made for their sanitary requirements, he must certify the same accordingly.

The Act, however, provides that when the authority by whom the medical officer of health is appointed are of opinion that the duties which would thus devolve on him could not be performed by him without interference with the due performance of his ordinary duties, they may appoint some other legally qualified medical practitioner having the qualification required for the office of medical officer of health of the district, to make the examinations and give the certificates above referred to.

I am directed to add that the Act does not empower a medical officer of health to charge any fee for a certificate under it, nor is he entitled to any remuneration for the discharge of the duties imposed on him by the Act in addition to the salary for the time being assigned to him as medical officer of health.

I am, Sir,

Your obedient Servant,

HUGH OWEN,

Secretary.

In a circular of the same date, the Board, referring to the last paragraph of the above letter, stated that in cases where the remuneration of the medical officer of health was subject to their approval they would be prepared to assent to a reasonable increase of such remuneration, if the local authority should consider that the duties imposed on the officer by the statute were sufficiently onerous to entitle him to such increase. The Board thought that if the local authority appointed some other medical practitioner to perform the duties referred to, it would be competent for them to pay him a suitable salary without any sanction on the part of the Board.

(a) The Open Spaces Act, 1887 (50 & 51 Vict. c. 32), is set out *ante*, p. 1212. The text of the other two Acts is also set out at pp. 1072, 1110, in so far as they are incorporated with the Act of 1887.

(b) The expression will, therefore, include an urban authority and a rural authority which has been invested with urban powers under the Act of 1887. See 50 & 51 Vict. c. 32, s. 5, incorporating 40 & 41 Vict. c. 35, s. 1.

(c) See this section, *ante*, p. 1110. The resolution must be passed at a meeting of the trustees summoned by at least one month's notice in writing, left at or sent by post to their last known or usual place of abode, and it must be passed by a majority of not less

limited term, to the local authority of the district in which the whole or the greater part in area of the land is situate, the land so held by them, if such authority is willing to accept such transfer, to be held by the transferees on the trusts and subject to the conditions on which the transferors held the same, or upon such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed upon between the transferors and transferees with the approval of the Charity Commissioners for England and Wales, or, as respects Ireland, of the Commissioners of Charitable Donations and Bequests for Ireland. Subject to the obligation of the land so transferred being used for the purposes of public recreation as aforesaid, the local authority may hold the same as and for the purposes of an open space under the Open Spaces Acts, 1877 to 1890. This section shall not apply to any trustees elected or appointed under any local or special Act of Parliament.

Appendix.

IV. When any open space^(d) shall be situate wholly or in part within the district of a local authority, and shall be vested in trustees, other than such trustees as are mentioned in the principal Acts,^(e) or in the last preceding section of this Act, for any charitable purpose, and as part of their trust estate, and it shall appear to the majority of such trustees that such open space is no longer required for the purposes of their trust, or that the same may, with advantage to the trust, be dealt with under the provisions of this section, it shall be lawful for such trustees, in pursuance of a resolution passed by them in the manner prescribed in the last preceding section of this Act,^(f) and where the open space is subject to the provisions of the Charitable Trusts Acts, 1883 to 1887,^(g) with such authority or approval as is required by those Acts for a sale of the open space,^(h) and in other cases, in pursuance of an order of the court to be obtained as hereinafter provided,⁽ⁱ⁾ to convey or demise such open space to such local authority upon such terms as shall be mutually agreed between them, and the local authority shall thenceforth be entitled to hold the same as an open space upon the terms and under the conditions specified in any such conveyance or demise, or upon such terms and under such conditions as may be so authorised or approved, or as the court shall from time to time order, as the case may be.

Similar power with respect to trustees of other open spaces.

V. An order of the court may be made upon application by the trustees, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons as to the court shall seem expedient, and may make such order thereon as in its discretion appears proper. Rules for carrying out the preceding provisions of this Act may from time to time be made by the same authority as the General Rules or Orders of the High Court of Justice in England and Ireland, and of the county courts in England, Ireland, and Wales respectively, are made.^(k)

Procedure for obtaining order of court.

VI. The Open Spaces Acts, 1877 to 1890, shall be applicable to the whole of any open space which is wholly or partly situate without the district of a local authority in the same manner to all intents and purposes as if the whole of such open space had been situated within such district.

Open Spaces Acts to apply outside district of local authority.

than two-thirds of those present, and confirmed by a similar majority at a meeting summoned in like manner, and held at an interval of not less than a month after the first meeting.

(d) Open space means any land (whether enclosed or unenclosed) which is not built on, and which is laid out as a garden, or is used for purposes of recreation, or lies waste and unoccupied. 44 & 45 Vict. c. 34, s. 1, *ante*, p. 1110.

(e) See 44 & 45 Vict. c. 34, s. 2, *ante*, p. 1111. These trustees may act under a private or local Act.

(f) See note (c), *supra*.

(g) This should be 1853 to 1887. These Acts are—16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110; 50 & 51 Vict. c. 49; further amended by 54 & 55 Vict. c. 17.

(h) The authority or approval seems to be that of the Charity Commissioners under 16 & 17 Vict. c. 137, s. 24.

(i) See section 5 of this Act.

(k) The court is defined by section 2. No rules have yet been made under this section.

Appendix. VII. Where a portion of an area of land not exceeding a twentieth part is covered with a building or buildings, such land may notwithstanding be deemed to be an open space within the meaning of the Open Spaces Acts, 1877 to 1890.

Buildings on open spaces.

THE WORKING CLASSES DWELLINGS ACT, 1890.

(53 & 54 VICT. CAP. 16.)

An Act to facilitate Gifts of Land for Dwellings for the Working Classes in Populous Places. [25th July, 1890.]

* * * * *

Exemption from 51 & 52 Vict. c. 42, Parts I., II., and 7 & 8 Vict. c. 97, s. 16, of gifts for working classes dwellings.

I. Parts I. and II. of the Mortmain and Charitable Uses Act, 1888 . . . shall not apply to any assurance, by deed or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place.^(a)

Provided as follows:—

(i.) The quantity of land which may be assured by will under this section shall not exceed five acres; and

(ii.) The deed or will containing the assurance must, within six months, in the case of a deed after the execution thereof, or in the case of a will after the probate thereof, be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales, and the deed containing the assurance must, within six months after the execution thereof, be registered in the office for registering deeds in the city of Dublin, if the land is situate in Ireland.

For the purposes of this Act, the expression “populous place” means the administrative county of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character.^(b)

Application of Act.

II. This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act.

Short title and construction. 51 & 52 Vict. c. 42.

III. (1.) This Act may be cited as the Working Classes Dwellings Act, 1890.

(2.) Expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.^(c)

^(a) Words relating to Ireland only are omitted from this section. But for this provision land could not have been conveyed, nor could money to be laid out in land have been assured by deed or will for the purpose of working classes dwellings. The above Act creates an exception similar to those created under Part III. of the Mortmain Act (51 & 52 Vict. c. 42), *ante*, p. 1251.

^(b) The expression “populous place” may include a part of a rural district which is thickly populated.

^(c) See section 10 of that Act which contains definitions of the terms “assurance,” “will,” and “land.”

Appendix.

THE TENANTS COMPENSATION ACT, 1890.

(53 & 54 VICT. CAP. 57.)(c)

An Act to amend the Law with respect to Compensation due to Tenants on Land under Mortgage.
[18th August, 1890.]

WHEREAS it is expedient to amend the Agricultural Holdings Act, 1883, and the Allotments and Cottage Gardens Compensation for Crops Act, 1887, in so far as they relate to the compensation paid to tenants for improvements where land is under mortgage: 46 & 47 Vict. c. 61.
50 & 51 Vict. c. 26.

* * * * *

I. This Act shall be construed as one with the Agricultural Holdings Act, 1883, and the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (in this Act referred to as the principal Acts), and this Act may be cited as the Tenants Compensation Act, 1890. Construction and short title.

II. Where a person occupies land under a contract of tenancy with the mortgagee, whether made before or after the passing of this Act, which is not binding on the mortgagee of such land, then— Compensation to tenants when mortgagee in possession.

- (1.) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession be due to the occupier from the mortgagee as respects crops, improvements, tillages, or other matters connected with the land whether under the principal Acts or the custom of the country, or agreements sanctioned by the principal Acts;

Provided that any sum ascertained to be due to the occupier for such compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Acts, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance only with section thirty-one of the Agricultural Holdings Act, 1883, as if the mortgagee were the landlord within the meaning of that section.

- (2.) Before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the said contract, he shall give to the occupier six months' notice in writing of his intention so to deprive him, and if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived, and such compensation shall be determined in like manner as compensation under the principal Acts, and shall be set off, charged, and recovered in manner before provided in this section. This sub-section shall only apply where the said contract is for a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack-rent.

III. Where compensation for improvements comprised in Part One or Part Two of the First Schedule to the Agricultural Holdings (England) Act, 1883, is charged by an order under section thirty-one of that Act, the charge shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, and shall be registered accordingly. 51 & 52 Vict. c. 51, to apply to compensation under 46 & 47 Vict. c. 61, s. 31.

IV. This Act shall not apply to provisions for the payment of tithe rentcharge arising under the Tithe Commutation Act, and subsequent Acts relating thereto. Exception of tithe rent-charge.
6 & 7 Will. 4, c. 71.

V. This Act shall not apply to Scotland or Ireland.

Extent of Act.

(c) This Act amends the 50 & 51 Vict. c. 26, *ante*, p. 1204, by providing for cases where the contract of tenancy has been made with a mortgagee, and is not binding on the mortgagee, and the mortgagee has taken possession.

Appendix.

THE LOCAL TAXATION (CUSTOMS AND EXCISE) ACT, 1890.

(53 & 54 VICT. CAP. 60.)(a)

*An Act for the Distribution and Application of certain Duties of Customs and Excise :
and for other purposes connected therewith.* [18th August, 1890.]

WHEREAS certain local taxation (customs and excise) duties have by an Act of the present session(b) been directed to be paid to the same local taxation accounts as the local taxation probate duty, and it is expedient to provide for the distribution and application of the duties so paid :

* * * * *

Application of
English share of
Customs and
Excise duties.

I. (1.) Out of the English share of the local taxation (customs and excise) duties paid to the local taxation account on account of any financial year—

(a.) The sum of three hundred thousand pounds shall be applied for such purposes of police superannuation in England as hereinafter mentioned ;

(b.) The residue shall, unless Parliament otherwise determines, be distributed between county and county borough funds, and carried to the Exchequer contribution accounts of those funds respectively, and applied under the Local Government Act, 1888, as if it were part of the English share of the local taxation probate duty, and shall be the subject of an adjustment between counties and county boroughs, according to section thirty-two of the said Act, by the Commissioners under that Act.(c)

51 & 52 Vict.
c. 41.

(2.) The council of any such county or county borough may contribute any sum received by such council in respect of the residue under this section, or any part of that sum, for the purposes of technical education(d) within the meaning of the Technical Instruction Act, 1889,(e) and may make that contribution over and above any sum that may be raised by rate under that Act.

(3.) A county council may make any such contribution by giving the amount of the contribution or any part of that amount to any town council or other urban sanitary authority in their county for the purpose of the same being applied by such council or authority under the Technical Instruction Act, 1889,(e) over and above any sum which can be raised under that Act by rate by such council or authority.(f)

52 & 53 Vict.
c. 76.

(4.) The council for any county to which the Welsh Intermediate Education Act, 1889, applies may contribute any sum received by such council under this section in respect of the said residue or any part of that sum towards intermediate and technical education under that Act, in addition to the amount which the council can, under that Act, contribute for such education.

52 & 53 Vict.
c. 40.

* * * * *

(a) A portion of this Act is here included, as it enables county councils to devote part of their share of customs and excise duties to technical education, and to contribute towards the costs incurred by urban sanitary authorities for the same purpose.

(b) This Act is the 53 & 54 Vict. c. 8, s. 7.

(c) It is provided by 54 & 55 Vict. c. 4, s. 2, *post*, that any moneys received by a county council under this clause, and directed by resolution to be appropriated or set aside for the purposes of technical or manual instruction, shall, although not expended or specifically contributed or allotted in whole or in part before the end of the financial year, remain applicable for such purposes, and shall not be applied in manner provided by section 23, sub-sections (2)—(10), of the Local Government Act, 1888, until the county council shall have made an order for such application.

(d) This includes both technical and manual instruction within the meaning of the Technical Instruction Acts, 1889 and 1891 (see 54 Vict. c. 4, s. 3), *post*.

(e) 52 & 53 Vict. c. 76, *ante*, p. 1269.

(f) See section 1, sub-section (1), (g), *ante*, p. 1269.

V. All sums paid in respect of the local taxation (customs and excise) duties to any local taxation accounts mentioned in section twenty-one of the Local Government Act, 1888, . . . shall be paid and distributed by the like central authority as in the case of the local taxation probate duty, and the enactments relating to such distribution shall, subject to the express provisions of this Act, apply accordingly; the said accounts are in this Act referred to by the names given them in the said Act.(g)

Appendix.

Distribution of local taxation (Customs and Excise) duties. 51 & 52 Vict. c. 41.

VI. In this Act, unless the context otherwise requires—

Definitions.

The expression “local taxation probate duty” means the moiety of probate duties which under section twenty-one of the Local Government Act, 1888, . . . is directed to be paid to the local taxation account in England. . . .

The expression “central authority” means as respects England the Local Government Board. . . . (g)

VII. This Act may be cited as the Local Taxation (Customs and Excise) Act, Short title. 1890.

THE ALLOTMENTS ACT, 1890.

(53 & 54 VICT. CAP. 65.)

An Act to provide for an Appeal from a Sanitary Authority failing to carry into effect the Allotments Act, 1887. [18th August, 1890.]

I. This Act shall be construed as one with the Allotments Act, 1887 (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Allotments Acts, 1887 and 1890, and this Act may be cited as the Allotments Act, 1890.(h)

Construction and short title. 50 & 51 Vict. c. 48.

II. (1.) Where such representation as is authorised by section two of the principal Act(i) has been made to the sanitary authority with respect to any district or parish, not being within the limits of a borough as defined by the Municipal Corporations Act, 1882, and any six persons qualified to make such representation(k) consider that the circumstances of the district or parish are such as to make it the duty of the sanitary authority to take proceedings under that Act therein, and that the sanitary authority have failed to acquire land adequate and suitable in quality and position to provide a sufficient number of allotments, such persons may petition the county council of the county in which such district or parish is situate, stating the facts and requesting the council to put into force the principal Act for the purpose of providing a sufficient number of allotments for the district or parish.

Appeal to county council by persons entitled to make representation to sanitary authority. 45 & 46 Vict. c. 50.

(2.) The council, if satisfied by the inquiry hereinafter mentioned(l) that the circumstances are such that land for allotments should be acquired, shall pass a resolution to that effect, and thereupon the powers and duties of the sanitary authority

(g) Words relating to Scotland and Ireland only are omitted from this section.

(h) The Allotments Act, 1887 (50 & 51 Vict. c. 48), is set out in *ante*, p. 1216.

(i) This is a representation by six registered parliamentary electors or ratepayers resident, in the case of an urban district, in the district, and in the case of a rural district, in some parish in that district, or by a parish council, that the circumstances are such that it is the duty of the sanitary authority to take proceedings under the Act.

(k) That is, six parliamentary electors or ratepayers. See the preceding note. It is conceived that if the representation has been made in the first instance by a parish council, the parish council may petition under this section.

(l) See section 3, sub-sections (3), (4), *post*.

Appendix. under the principal Act, so far as regards that district or parish, shall be transferred from the sanitary authority to the county council, and the county council, in substitution for the sanitary authority, shall proceed to acquire land in accordance with the principal Act, and otherwise execute that Act in the said district or parish. (a)

Provided that this section shall not affect the property in, or any powers or duties of the sanitary authority in relation to, any land which before the passing of the said resolution was acquired by the sanitary authority under the principal Act.

Standing committee.

51 & 52 Vict.
c. 41.

III. (b) (1.) For the purposes of this Act or the principal Act every county council, as soon as it is conveniently practicable after the passing of this Act, and annually thereafter at the meeting for the election of chairman, shall appoint under the Local Government Act, 1888, a standing committee not exceeding one-fourth of their whole body. (c)

(2.) For the purpose of any business under this Act relating to any district or parish wholly or partly situate in an electoral division, the county councillor representing that division shall, if not already appointed, be an additional member of the committee.

(3.) Any petition under this Act shall as, of course, and without any order of the council, be referred to the standing committee, who, on being satisfied of the *bona fides* of the application, shall forthwith cause a local inquiry into the circumstances to be made, and shall report the result to the council. (d)

(4.) An inquiry under this Act or the principal Act shall be held by such one or more members of the standing committee, or such officer of the county council or other person as the standing committee may appoint to hold the same.

Supplemental provisions on council acquiring powers of sanitary authority.

IV. Where the powers of the sanitary authority under the principal Act are, by virtue of this Act, transferred to the county council, the following provisions shall have effect:—

(a.) The principal Act shall apply with the modifications necessary for giving effect to this Act:

(b.) The county council may borrow for the purposes of this Act subject to the conditions, in the manner, and on the security of the rate, subject to, in, and on the security of which the sanitary authority might have borrowed under the principal Act, if this Act had not been passed. The council shall have power to charge the said rate with the repayment of the principal and interest of the loan; and such loan with the interest thereon shall be repaid by the sanitary authority in like manner, and such charge shall have the like effect, as if the loan were lawfully raised and charged on that rate by the sanitary authority: (e)

(c.) The county council shall keep separate accounts of all receipts and expenditure under this Act, and, in the application of sub-section six of section ten of the principal Act, the Local Government Act, 1888, shall be substituted for the Public Health Act, 1875: (f)

(d.) The county council may make a provisional order for the purchase of land on the recommendation of the standing committee, without any petition from

(a) In other words, the county council will simply execute the Act in the district or parish as if they were the sanitary authority.

(b) This section is incorporated by section 9 (13) of the Local Government Act, 1894, *ante*, p. 709, for the purposes of the acquisition of land by a parish council.

(c) The power of a county council to appoint a committee depends really upon section 22 of the Municipal Corporations Act, 1882, which is incorporated with the Local Government Act, 1888.

(d) When this report has been received, it will rest with the county council to decide whether they will proceed further under the present Act, or whether they will have recourse to the procedure authorised by section 9 of the Local Government Act, 1894. See Memorandum of Local Government Board, dated May, 1895, in Appendix II., *post*.

(e) The county council will have power to borrow as if they were the sanitary authority acting under section 10 of the principal Act.

(f) The effect of this provision is that the accounts will be audited as accounts of the county council under section 71 of the Local Government Act, 1888.

51 & 52 Vict.
c. 41.
33 & 39 Vict.
c. 55.

the sanitary authority, and the council shall be considered as the promoters of the order: **Appendix.**

(e.) The county council may delegate to the sanitary authority any powers under section six, section seven, or section eight of the principal Act (which sections relate to the management of the allotments, and the letting and use thereof, and the recovery of the rent and of possession thereof); and, subject to the terms of the delegation, all expenses and receipts arising in the exercise of the powers so delegated shall be paid and dealt with as expenses and receipts of the sanitary authority under the principal Act:

(f.) The county council, on the request of the sanitary authority, may, by order under their seal, transfer to that authority all or any of the powers, duties, property, and liabilities vested in and imposed on the council by virtue of this Act as regards the district of such authority or any part thereof, and the property so transferred shall be deemed to have been acquired by that authority under the principal Act, and that authority shall act accordingly. (g)

V. Any room in a school receiving a grant out of moneys provided by Parliament may, except during ordinary school hours, be used free of charge for the purpose of an inquiry under this Act, or for the purposes of this Act by the county council or any committee appointed under this Act, or, with the consent of any two managers for the purpose of holding public meetings to discuss any question relating to allotments under this Act or the principal Act, (h) but any damage done to the room and any expense incurred by the person or persons having control over the room on account of its being so used shall be paid by the county council or by the persons calling the meeting. Use of school-room free of charge.

Nothing in this section shall give any right to hold a public meeting in a school-room (1) unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation to the local authority under the principal Act, (i) has been given, if the school is under a school board, to the clerk of the board, and in any other case to one of the managers of the school; nor (2) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith, after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting.

If the persons calling the meeting fail to obtain the use of a schoolroom under this section, they may appeal to the standing committee under this Act, and the committee shall forthwith decide the appeal and make such order respecting the use of the room as seems just.

VI. (1.) All expenses incurred by the county council in executing the principal Act or this Act in any district or parish on default of a sanitary authority, or incurred by the council in or incidentally to a local inquiry under this Act, shall be paid in the first instance out of the county fund as for general county purposes, and, unless defrayed out of moneys received by the council in respect of any land acquired under this Act otherwise than by sale or exchange, or out of money borrowed as before in this Act mentioned, shall when the powers and duties of the sanitary authority under the principal Act are transferred to the county council in **Expenses.**

(g) In the ordinary case when it is necessary to acquire land the county authority make a provisional order on the petition of the sanitary authority under section 3 of the principal Act.

This provision appears to be intended to prevent the permanent superseding of the sanitary authority, by enabling the county council to transfer to them the powers, &c., which become vested in the council in their default. See section 2, *ante*, p. 1279.

(h) See also section 4 (1) (e) of the Local Government Act, 1894, 56 & 57 Vict. c. 73, *ante*, p. 699.

(i) See note (i), *ante*, p. 1279.

Appendix. pursuance of this Act, be repaid to the county council as a debt by the sanitary authority.

(2.) All sums payable by a sanitary authority in pursuance of this Act shall be defrayed in like manner as expenses under the principal Act are required to be defrayed, *(a)* save that in the case of a rural authority they shall, with the exception of the principal and interest of any money borrowed, or the rent of any land hired by the county council be charged as general expenses.

(3.) All sums received by a county council in respect of any land acquired under this Act otherwise than from any sale or exchange, *(b)* in so far as they are not required for the payment of expenses incurred by them in respect of such land, shall be paid to the sanitary authority, and in the case of a rural sanitary authority shall be credited to the parish on account of which the land was acquired.

THE TECHNICAL INSTRUCTION ACT, 1891.

(54 & 55 VICT. CAP. 4.)

An Act to amend the Law relating to Technical Instruction. [26th March, 1891.]

* * * * *

Explanation
of powers of
local authority
as to technical
instruction.
52 & 53 Vict.
c. 76.

I. (1.) Subject to the conditions and restrictions contained in the Technical Instruction Act, 1889, *(c)* a local authority may—

- (a)* Make such provision in aid of the technical or manual instruction for the time being supplied in a school or institution outside its district as may, in the opinion of the authority, be necessary for the requirements of the district in cases where similar provision cannot be so advantageously made by aiding a school or institution within its district; *(d)* and
- (b)* Provide or assist in providing scholarships for or pay or assist in paying the fees of students ordinarily resident in the district of the local authority at schools or institutions within or outside that district. *(e)*

(2.) In distributing the provision made in aid of technical or manual instruction, the local authority may consider all the circumstances of the case, and shall not be bound to distribute the provisions so made exclusively in proportion to the nature and amount of efficient technical or manual instruction supplied by those schools or institutions respectively. *(f)*

Application of
balances.
53 & 54 Vict.
c. 60.

II. Any moneys received by a county council under sub-section (1) *(b)* of section one of the Local Taxation (Customs and Excise) Act, 1890, *(g)* and directed by resolution of the county council to be appropriated or to be set aside for the purposes of technical or manual instruction, shall, although not expended or specifically contributed or allotted in whole or in part before the end of the financial year, remain applicable for such purposes, and shall not be applied in manner provided by sub-section (2) and the following sub-sections of section twenty-three of the Local Government Act, 1888, until the county council shall have made an order for such application.

51 & 52 Vict.
c. 41.

(a) See section 10 of the principal Act. The expenses in the case of an urban authority are payable as expenses of executing the Public Health Act, 1875, in the case of a rural authority as special expenses; see, however, the provision at the end of the above clause.

(b) As to the application of the proceeds of a sale or exchange, see section 11 of the principal Act.

(c) See this Act, *ante*, p. 1269.

(d) Under the Act of 1889, aid could only be given to schools and institutions within the district.

(e) This is a new provision.

(f) This is an amendment of 52 & 53 Vict. c. 76, s. 1 (1), *(d)*, *ante*, p. 1270.

(g) See this Act, *ante*, p. 1278.

Where a council shall have referred to a committee the question of appropriating to purposes of technical or manual instruction any sum consisting of the whole or any part of such moneys, this section, unless and until the council otherwise direct, shall, until the committee shall have made their report and the council shall have arrived at a decision thereon or the appointment of the committee shall have been rescinded, apply to such sum as if the same had been directed by the council to be appropriated to such purposes.

Appendix.

III. The expression "technical education" in section one of the Local Taxation (Customs and Excise) Act, 1890,^(h) shall be deemed to include both technical and manual instruction within the meaning of the Technical Instruction Acts, 1889 and 1891. Construction of 53 & 54 Vict. c. 60, s. 1.

IV. This Act may be cited as the Technical Instruction Act, 1891, and shall be construed as one with the Technical Instruction Act, 1889, and this Act and the Technical Instruction Act, 1889, may be cited together as the Technical Instruction Acts, 1889 and 1891. Short title and construction.

THE RAILWAY AND CANAL TRAFFIC (PROVISIONAL ORDERS) AMENDMENT ACT, 1891.

(54 & 55 VICT. CAP. 12.)⁽ⁱ⁾

An Act to remove doubts as to the Powers of Public Bodies in reference to Provisional Order Bills under the Railway and Canal Traffic Act, 1888.

[11th May, 1891.]

WHEREAS by an Act of the thirty-fifth and thirty-sixth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act to authorise the application of funds of municipal corporations and other governing bodies in certain cases," hereinafter referred to as the Borough Funds Act, authority is given to the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, to apply the borough fund or rate, or other the public funds or rates under the control of any such governing body, to the payment of the costs, charges, and expenses of promoting or opposing any local and personal Bill or Bills in Parliament: 35 & 36 Vict. c. 91.

And whereas by the Local Government Act, 1888, . . . the county council of an administrative county has the same powers of opposing Bills in Parliament as are conferred on the council of a municipal borough by the above-recited Act of the thirty-fifth and thirty-sixth years of Victoria, chapter ninety-one: 51 & 52 Vict. c. 41.

* * * * *

And whereas by the Railway and Canal Traffic Act, 1888, it was, among other things, provided that if while any Bill to confirm a provisional order by the Board of Trade under section twenty-four of that Act be pending in either House of Parliament a petition be presented against the Bill, or any classification and schedule comprised therein, the Bill, so far as it relates to the matter petitioned against, should be referred to a select committee, or, if the two Houses of Parliament think fit so to order, to a joint committee of such Houses, and the petitioner should be allowed to appear and oppose as in the case of a private Bill; and further, it was by the said Act provided that the Act of Parliament confirming any provisional order made under that section should be a public general Act: 51 & 52 Vict. c. 25.

^(h) See this section, *ante*, p. 1278.

⁽ⁱ⁾ This Act amends 51 & 52 Vict. c. 25, s. 24, *ante*, p. 1239. Its effect so far as regards sanitary authorities is to enable them to petition against and oppose any Bill confirming any provisional order under that section, subject only to compliance with the requirements of the Borough Funds Act, 1872. Words relating to Scotland or Ireland only have been omitted throughout the Act. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

Appendix.

And whereas doubts have been entertained whether in view of the said enactment governing bodies as defined by the Borough Funds Act . . . and county councils have power to apply the funds or rates under their control in opposing or subscribing towards the opposition of any Bill to confirm any provisional order made under section twenty-four of the Railway and Canal Traffic Act, 1888, and it is expedient that such doubts should be removed :

* * * * *

Powers of governing bodies and county councils with reference to bills for confirming provisional orders made under 51 & 52 Vict. c. 25, s. 24.

I. Every governing body within the meaning of the Borough Funds Act(a) . . . and every county council shall be entitled to be a petitioner and to appear and oppose any Bill to confirm any provisional order made under section twenty-four of the Railway and Canal Traffic Act, 1888,(b) and to provide or contribute towards providing the expenses of the appearance or opposition of a petitioner out of the funds or rates under their respective control, as if the Bill for confirming such provisional order were a local or personal Bill within the meaning of section two of the Borough Funds Act, . . . and the provisions of the said last-mentioned Act . . . shall apply to any such appearance or opposition, and to any expenses incurred or to be incurred in relation thereto: Provided that in the case of a county council no consent of owners and ratepayers shall be required.

Short title.

II. This Act may be cited as the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891.

THE MUSEUMS AND GYMNASIUMS ACT, 1891.

(54 & 55 VICT. CAP. 22.)

An Act to enable Urban Authorities to provide and maintain Museums and Gymnasiums.
[3rd July, 1891.]

* * * * *

Short title.

I. This Act may be cited as the Museums and Gymnasiums Act, 1891.

Extent of Act.

II. (1.) This Act shall extend to any district where the same is adopted as hereinafter provided, but only so far as the adoption extends.

(2.) This Act shall not extend to Scotland or the administrative county of London.

Adoption of Act.

III. (1.) This Act may be adopted by any urban authority(c) for their district either wholly or so far as it relates to museums only or to gymnasiums only.

(2.) The adoption shall be by a resolution passed at a meeting of the urban authority, and one month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a.) Given in the mode in which notices to attend meetings of the authority are usually given; or

(b.) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England.

(a) See section 1 of that Act, *ante*, p. 1000. The expression “governing body” does not include a rural authority. See note (b) on p. 1000, *ante*.

(b) See that section, *ante*, p. 1239.

(c) See the definition of an urban authority in section 14, *post*. See also the power of an urban authority to close during the winter months a swimming bath established by them under 41 & 42 Vict. c. 14, s. 5, and to establish a gymnasium therein, *ante*, p. 1078.

(3.) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation the Act shall extend to that district.

Appendix.

(4.) A copy of the resolution shall be sent to the Local Government Board.

(5.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement. (d)

IV. An urban authority may provide and maintain museums for the reception of local antiquities or other objects of interest, and gymnasiums with all the apparatus ordinarily used therewith, and may erect any buildings, and generally do all things necessary for the provision and maintenance of such museums and gymnasiums.

Power to provide museum and gymnasium.

V. A museum provided under this Act shall be open to the public not less than three days in every week free of charge, but subject thereto an urban authority may admit any person or class of persons thereto as they think fit, and may charge fees for such admission, or may grant the use of the same or of any room therein, either gratuitously or for payment, to any person for any lecture or exhibition, or for any purpose of education or instruction, and the admission to the museum or room the use of which is so granted may be either with or without payment as directed by the urban authority, or with the consent of the urban authority by the person to whom the use of the museum or room is granted.

Admission to museum.

VI. (1.) A gymnasium provided under this Act shall be open to the public free of charge for not less than two hours a day during five days in every week.

Admission to gymnasium.

(2.) Subject thereto the urban authority—

(a.) May regulate the admission of the public to such gymnasium, either by classes or otherwise as they think fit, and may charge fees for such admission; and

(b.) May, for not more than two hours in each day, grant the exclusive use thereof to any person or body of persons for the purpose of gymnastic exercises, for such payment and on such terms and conditions as they think fit.

(3.) An urban authority may (for not more than twenty-four days in one year nor more than six consecutive days) close the gymnasium for use as a gymnasium, and grant the use of the same gratuitously or for payment to any person for the purpose of any lecture, exhibition, public meeting, entertainment, or other public purpose, and the admission on such days shall be either with or without payment as directed by the urban authority, or with the consent of the urban authority by the person to whom the use of the same is granted.

VII. (1.) An urban authority may make regulations(e) for all or any of the following matters, namely,—

Regulations and bye-laws.

(a.) For fixing the days of the week or hours of the days, as the case may be,

(d) The provisions of the above section as to the adoption of this Act are, with one exception, identical with those of 53 & 54 Vict. c. 34, s. 3, *ante*, p. 549, and the reader is referred to the notes on that section. The exception just mentioned is that in subsection (2), which requires the notices to be affixed to church and chapel doors. As to this, see the note to the similar provision in the Public Health Act, 1875, sched. 3, rule 4, *ante*, p. 439.

(e) Regulations made by an urban authority need no confirmation. See section 188 of the Public Health Act, 1875, *ante*, p. 259.

Appendix.

during which the museum or gymnasium is to be open to the public free of charge:

- (b.) For giving special facilities to students for the use of the museum:
- (c.) For fixing the fees to be paid for the admission of persons to the museum and for the use thereof either by students or in any other special manner:
- (d.) For regulating the use of the gymnasium either by classes or otherwise, and fixing the scale of fees to be paid for such use:
- (e.) For prescribing conditions on which the exclusive use of the museum, or any room therein, or of the gymnasium is granted in any case:
- (f.) For determining the duties of the instructor, officers, and servants of the urban authority in connexion with a museum or gymnasium:
- (g.) Generally for regulating and managing the museum or gymnasium.

(2.) The urban authority may make bye-laws for regulating the conduct of persons admitted to the museum or gymnasium, and may by any such bye-law provide for the removal from the museum or gymnasium of any person infringing any such bye-law by any officer of the urban authority or by any constable.

All the provisions with respect to bye-laws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875,^(a) and any enactment amending or extending those sections, shall apply to all bye-laws from time to time made by an urban authority under the powers of this Act.

38 & 39 Vict.
c. 55.

Closing of
museum or
gymnasium for
repairs.

VIII. An urban authority may at such time as they think fit close a museum or gymnasium provided by them for repairs and shall give a fortnight's notice of their intention to close the same by affixing a notice to that effect on the door of the museum or gymnasium, as the case may be, or otherwise as they think fit.

Appointment of
officers and
servants for
museum and
gymnasium.

IX. An urban authority may appoint and pay such officers and servants as they think fit for the purpose of a museum or gymnasium provided under this Act, and may employ and pay instructors in connexion with a gymnasium.

Expenses and
borrowing.

X. (1.) The fees and other money received by an urban authority under this Act shall be applied in defraying the expenses of the museum or gymnasium in respect of which they are received.

(2.) So far as such expenses are not so defrayed, they shall be defrayed as part of the general expenses of the execution by the urban authority of the Public Health Acts.^(b)

(3.) An urban authority may borrow for the purposes of this Act in like manner and subject to the like conditions as for the purpose of defraying the said general expenses, and for that purpose sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875 (relating to borrowing),^(c) and sections two hundred and forty-two and two hundred and forty-three of the same Act (relating to loans by the Public Works Loan Commissioners),^(d) as amended by section two of the Public Works Loans Act, 1879,^(e) shall apply.

(4.) Separate accounts shall be kept of the receipts and expenditure of an urban authority in connexion with any museum or gymnasium established under this Act, and such accounts shall be audited in like manner and with the like power to the officer auditing the same, and with the like incidents and consequences as the accounts of the urban authority are for the time being required to be audited by law.^(f)

33 & 39 Vict.
c. 55.

42 & 43 Vict.
c. 77.

(a) See these sections, *ante*, p. 381. These bye-laws must be confirmed by the Local Government Board.

(b) See section 207 of the Public Health Act, 1875, *ante*, p. 276. The expenses will generally fall on the general district rate.

(c) See these sections, *ante*, p. 314.

(d) See these sections, *ante*, p. 323.

(e) See this section, *ante*, p. 1109.

(f) See the sections of the Public Health Act, 1875, relating to audit, *ante*, p. 325.

(5.) The amount expended by an urban authority under this Act shall not in any year exceed the amount produced by a rate of a halfpenny in the pound for a museum, and the like amount for a gymnasium established under this Act. **Appendix.**

XI. (1.) Land for the purposes of this Act may be acquired by an urban authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of land)(g) shall apply accordingly, but no land shall be so acquired otherwise than by agreement. **Acquisition of land.**

(2.) An urban authority may, with the consent of the Local Government Board, appropriate, for the purposes of this Act, any land which may be for the time being vested in them, or at their disposal.

XII. (1.) Where it appears to an urban authority that a museum or gymnasium which has been established under this Act for seven years or upwards is unnecessary or too expensive, they may, with the consent of the Local Government Board, sell the same for the best price that can reasonably be obtained for the same, and shall convey the same accordingly. **Power to sell museum or gymnasium in certain cases.**

(2.) Any moneys arising from such sale shall be applied toward the repayment of any money borrowed for the purpose of the museum or gymnasium sold, and, so far as not required for that purpose, shall be applied to any purpose to which capital moneys are properly applicable, and which may be approved by the Local Government Board.

XIII. All powers given to an urban authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed. **Powers of Act cumulative.**

XIV. In this Act the expression "urban authority" means an urban sanitary authority under the Public Health Acts, and the expression "district" means an urban sanitary district under those Acts.(h) **Interpretation.**

XV. [*Application of Act to Ireland.*]

THE CUSTOMS AND INLAND REVENUE ACT, 1891.

(54 & 55 VICT. CAP. 25.)

An Act to grant certain Duties of Customs and Inland Revenue and to amend the Law relating to Customs and Inland Revenue. [3rd July, 1891.]

* * * * *

IV. (1.) Sub-section two of section twenty-six of the Customs and Inland Revenue Act, 1890, is hereby amended by the substitution of the words, "where the annual value of each dwelling shall not amount to twenty pounds," for the words "for persons at rents not exceeding for each dwelling the rate of seven shillings and sixpence a week, and occupied only by persons paying such rents."(i) **Amendment of the law as to inhabited house duty on houses for dwellings of small annual value.**

(2.) In the case of any house originally built, or adapted by additions or alterations, and used, so far as the same is used as a dwelling-house, for the sole purpose of providing separate dwellings at an annual value not exceeding forty pounds for each dwelling, the commissioners acting in the execution of the Acts relating to inhabited house duties shall, upon production of such a certificate as is mentioned in the said sub-section, grant relief by confining the assessment to the annual value

(g) See these sections, *ante*, p. 214.

(h) See the Public Health Act, 1875, s. 6, *ante*, p. 24.

(i) The effect of this amendment is set out in the note to the section, *ante*, p. 1273.

Appendix. of the house exclusive of every dwelling therein of an annual value below twenty pounds (if any), and by reducing the rate of duty to threepence.^(a)

(3.) The provisions in the said sub-section in relation to a certificate shall apply to a certificate to be produced under this section.

Short title.

V. This Act may be cited as the Customs and Inland Revenue Act, 1891.

THE BRINE PUMPING (COMPENSATION FOR SUBSIDENCE) ACT, 1891.

(54 & 55 VICT. CAP. 40.)(b)

An Act to provide Compensation for Owners of Property suffering through the Subsidence of the Ground caused by the pumping of Brine. [28th July, 1891.]

* * * * *

(i.) Preliminary.

Short title.

I. This Act may be cited as the Brine Pumping (Compensation for Subsidence) Act, 1891.

Extent of Act.

II. This Act shall not extend to Scotland or Ireland.

(ii.) Formation of Compensation District.

Application for order for formation of district.

III. Any owner or owners of land in any county of a rateable value in the aggregate of not less than two thousand pounds and any sanitary authority^(c) in any county, may apply to the Local Government Board by memorial, alleging that subsidence of land belonging to such owner or owners, or situate within the district of such authority, is caused by brine pumping operations, whereby loss or damage is occasioned, and praying that a compensation district may be formed under this Act, with such boundaries as shall be described in the memorial, or such other boundaries as the Local Government Board shall fix.

Inquiry on receipt of memorial.

IV. On the receipt of the memorial, the Local Government Board may, if they think a sufficient *prima facie* case has been made out, and after requiring (if they think fit) security to be given for any costs which may be incurred by the Board in relation to any local inquiry under this section, direct a local inquiry to be held by an inspector as to the expediency of forming the proposed district and as to the boundaries to be assigned to such district, and as to any further incidental matters in relation thereto as the Board may think fit.

Procedure on inquiry.

V. Before a local inquiry under this Act is held, the Local Government Board shall cause to be given public notice by advertisement in local newspapers, or otherwise, in such manner as they think fit, of the time and place at which the inquiry will be held, and the inspector shall hear all persons locally interested^(d) appearing before him and desirous of being heard in relation to the formation of the district, and the establishment of a compensation board under this Act.

^(a) This sub-section applies where the annual value of the separate dwellings does not exceed 40*l.* In such case the dwellings under 20*l.* are exempt, and the others charged at the reduced duty.

^(b) As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

^(c) This expression includes both urban and rural sanitary authorities. See section 52, *post*.

^(d) This expression will include a person resident or a person having property in the locality.

VI. (1.) If the Local Government Board after receiving the report of their inspector determine to form a compensation district as prayed by the memorial, or with addition of any land or exclusive of any of the lands proposed by the memorial to be included in the district, the Local Government Board shall frame a draft provisional order forming a compensation district and establishing a compensation board under this Act in such manner as they think expedient having regard to all the circumstances of the case. Appendix.
—
Formation of district by provisional order.

(2.) The Local Government Board shall cause printed copies of the draft order to be deposited with the clerk of the county council of the county or counties in which the district or any part of the district proposed to be formed by the draft order is situate and with the sanitary authority or authorities^(e) exercising jurisdiction in such district or any part thereof. The copies so deposited shall be open to inspection without fee by all owners and occupiers of land and by all brine pumpers within the district.

(3.) The Local Government Board shall also cause notice to be given of such deposit of copies and of the purport of the draft order by advertisement in two successive weeks in some local newspaper circulating in the district proposed to be formed by the draft order.

VII. (1.) The Local Government Board may submit to Parliament for confirmation any provisional order made by the Board in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament. Confirmation, &c., of provisional orders.

(2.) If while the Bill confirming any such order is pending in either House of Parliament a petition is presented against any order comprised therein, the Bill so far as it relates to such order may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.^(f)

(3.) Any Act confirming any provisional order made under this Act may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament.

(4.) The Local Government Board may revoke either wholly or partially any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament.

(5.) The making of a provisional order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with.

(6.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

(7.) The reasonable costs sanctioned by the Local Government Board of the sanitary authority in or about any inquiry by that Board in pursuance of this Act and in or about the promotion of or opposition to any provisional order under this Act shall be payable out of the fund or rate applicable to the general expenses of such authority.^(g)

VIII. (1.) The boundaries of any compensation district may be altered by the Local Government Board on such application as in this section provided, but after the like inquiry and with the like proceedings as to a provisional order as in the case of the formation of a district, and for the purpose of such alteration the foregoing provisions relating to an inquiry and a provisional order shall apply so far as practicable. Alteration of boundaries of the district.

(2.) An application for the alteration of the boundaries of a compensation district may be made by any brine pumper and by any person or body of persons authorized

(e) See note (c), *ante*, p. 1288.

(f) This is the usual course when a Bill confirming a provisional order is opposed.

(g) See the Public Health Act, 1875, s. 207, *ante*, p. 276, as to the general expenses of an urban authority, and section 229 of the same Act, *ante*, p. 308, as to the general expenses of a rural authority.

Appendix. — to apply under this Act(a) to the Local Government Board for the formation of a compensation district, except that in the case of an application by an owner or owners of property the aggregate rateable value of the property of such owner or owners for the purposes of this section shall be not less than five hundred pounds.

(iii.) *Compensation Boards.*

Compensation board for each district.

IX. For every district formed under this Act there shall be a compensation board constituted of a number of members (not exceeding nine).

Incorporation of board.

X. (1.) Every compensation board shall be a body corporate by the name specified in the order establishing such board with perpetual succession and a common seal, and with power to acquire and hold lands for the purposes of their constitution without any license in mortmain.

(2.) No act or proceeding of a board, or of any committee appointed by the board, shall be questioned on account of any vacancy in their body.

Election of members and incidental matters.

XI. (1.) Of the members of every compensation board—

One-third, not being brine pumpers or persons employed by them for the purposes of their business, shall be appointed by the county council or councils of the county or counties in which the district is situated;

One-third shall be elected by the brine pumpers within the district;

One-third, not being brine pumpers or persons employed by them for the purposes of their business, shall be appointed by the sanitary authority or authorities,(b) other than the council of a county borough, having jurisdiction within the district.

(2.) An order of the Local Government Board under this Act shall contain all such provisions, subject to the provisions of this Act, for the number of members of the compensation board to be established for the district, and for their election, appointment, and retirement, and for the formation and revision of a register of persons entitled to vote at elections, the number of votes to which each brine pumper shall be entitled, and for any other matters as may seem to the Local Government Board expedient.

Chairman of board.

XII. (1.) A board shall at their first meeting after their constitution, and at their first meeting in each subsequent year, choose one of their members to be chairman and one other of their members to be vice-chairman, and the members so chosen shall continue in office until the next meeting at which a chairman and vice-chairman are to be chosen pursuant to the above provision.

(2.) If any casual vacancy occur in the office of chairman or vice-chairman, the board shall as soon as conveniently may be after the occurrence of such vacancy choose one of their members to fill such vacancy; and every chairman or vice-chairman so chosen as last aforesaid shall continue in office so long only as the person in whose place he is chosen would have been entitled to continue in office.

Resignation of members.

XIII. A member of a compensation board may resign his office by notifying in writing his intention so to do to the chairman or clerk of the board for the time being.

Casual vacancies.

XIV. Any casual vacancy in a compensation board occurring by death, resignation, or otherwise shall be filled up in manner to be decided by the regulations of the Local Government Board by the body of persons by whom the vacating member was originally chosen, as soon as reasonably practicable after the occurrence of the vacancy; but a member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

Meetings and proceedings of boards.

XV. Meetings of compensation boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in the Schedule to this Act.

(a) See section 3, *ante*, p. 1288.

(b) See note (c), *ante*, p. 1288.

XVI. (1.) A minute of proceedings at a meeting of a compensation board or of a committee, signed at the same or at the next ensuing meeting by any person describing himself as, or appearing to be, chairman of the meeting or committee at which the minute is signed, shall be received in evidence without further proof. Appendix.
—
Minutes of proceedings, &c.

(2.) Until the contrary is proved, every meeting of a compensation board or committee whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified.

XVII. A board may, from time to time, appoint one or more committee or committees for any of the purposes of this Act, and may fix the quorum of any committee, and prescribe the manner in which the business of a committee shall be conducted: Provided that no rate shall be made or declared, nor any award of compensation made or allowed or disallowed, except at a general meeting of the board. Committees of boards.

XVIII. A board may appoint and pay such surveyors and other officers as they think necessary, and they may make all such surveys and valuations as they think necessary. Power to appoint officers.

XIX. A board may from time to time make regulations for defining the duties of any officers or servants of the board. Regulations by boards.

XX. A board may invest any moneys for the time being in their hands, and not immediately required for the purposes of this Act, in any securities in which trustees are for the time being empowered by law to invest trust moneys, or may place such moneys on deposit in any bank. Power to invest moneys.

(iv.) *Compensation Fund and Claims thereon.*

XXI. (1.) Every board shall form and maintain a compensation fund for their district. District compensation funds.

(2.) The compensation fund for the district shall be formed and maintained by the assessment and levy as in this Act provided of such rate (not exceeding the limit or rate hereinafter mentioned) for every one thousand gallons of brine pumped or raised within the district as the board from time to time think necessary and order to be levied.

(3.) The compensation fund for a district shall be solely applicable to compensation for damage happening within that district arising from subsidence, and for the expenses and liabilities of the board, and costs allowed by the board to any claimant or objector.

XXII. The damage for which compensation may be made under this Act shall be damage of any of the following kinds (and no other) arising from subsidence which has happened after the passing of this Act:— Damage for which compensation may be made.

(1.) Depreciation of land (but not including any erection of works on or under such land except as hereinafter in this section provided) which shall subside or become permanently submerged, including any necessary expense of fencing in such land:

(2.) Destruction or structural damage of buildings and walls of all kinds, but not including damage to machinery or fixtures, whether removable or not:

(3.) The proper and necessary expense of building retaining walls or bolting together or underpinning or otherwise supporting, raising, or repairing buildings and walls:

(4.) The proper and necessary expense of altering the approaches to or the levels of lands or buildings: (c)

(c) As to the right of the highway authorities to alter the level of roads, &c. without liability to make compensation for obstructing access to adjoining lands, see the cases cited in note (f), ante, p. 172, and *Atherton v. Cheshire County Council*, 60 J. P. 6.

Appendix.

- (5.) The proper and necessary expense of raising, lowering, diverting, or making good private roads, bridges, fences, sewers, or drains.

Provided that no claim shall be made by any person unless he has such title to or interest in the property so damaged or some part thereof as would entitle him to recover in respect of such damage if the same had been caused by the wrongful excavation by any other person of strata underlying or supporting such property, and no claim shall be made except for damage as hereinbefore defined, and any compensation award shall in no case exceed the amount of the actual loss sustained by the person making the claim (herein referred to as the claimant), or exceed the amount of the expense necessary to make good any damage sustained, as hereinbefore defined, all circumstances which in the opinion of the board or other tribunal are material being taken into consideration.

The compensation board shall have power to make contributions out of any sum to be levied under this Act towards the extra cost of building, re-building, or replacing any existing or future building within the area of its district on some system or style of building whereby it can conveniently be raised, and may also provide plans and models of buildings recommended as suitable and convenient for the purpose aforesaid.

Claims for compensation.

XXIII. (1.) Any claimant who alleges the following matters (that is to say),

- (i.) That any damage as in this Act defined has been caused to any property by subsidence of the same or of any other land, and that the subsidence is the result of pumping or raising of brine, and has happened after the passing of this Act; and
- (ii.) That he has such title to or interest in the property so damaged or some part thereof as would entitle him to recover in respect of such damage if the same had been caused by the wrongful excavation by any other person of strata underlying or supporting such property;

and who has given notice in writing to the board, or if there be no such board, then to the sanitary authority of the district in which such property is situated, of such damage within six months after the same became apparent, may send in to the board a claim for such damage to the extent of his title or interest.

(2.) It shall be lawful for a compensation board from time to time by regulations under this Act to prescribe the form of any such claim and the time within which and the manner in which any such claim shall be made, and the proofs by which the claim is to be accompanied, and no claim shall be allowed with respect to any damage of which the prescribed notice shall not have been given, nor in respect of which the provisions of such regulations (unless dispensed with for causes which the board shall deem reasonable and sufficient) are not observed.

(3.) Every board shall, once or oftener in each year, give notice by such advertisement as shall be prescribed in such regulations requiring all claims intended to be made under this Act to be sent in to such board, and requiring such claims to be so sent in within a time to be named in such advertisement.

(4.) On the expiration of the period within which claims are to be sent in to the board, such board shall give to every brine pumper within their district notice of all claims (if any) received by such board, specifying in such notice the names of the claimants, the amount claimed, and the property in respect of which each claim is made, and shall give by advertisement in any newspaper circulating in the district one month's notice of the day on which such board intends to proceed to adjudicate on such claims.

(5.) The board shall, on the day appointed for adjudication, and on any subsequent day or days appointed by them for the purpose, consider all claims duly made and which have not been previously adjudicated on, and shall, so far as they think practicable and convenient, adjudicate thereon in such manner as they shall think fit, and allow or disallow all such claims or any items thereof, or by agreement with the claimant may refer any claim to arbitration.

Mode of dealing with claims.

XXIV. A board shall disallow any claim for damage which in their opinion was not caused by subsidence of any land or was caused by subsidence of land which is proved not to have been caused by brine pumping, or in respect of which in their

opinion (subject to appeal as in this Act mentioned) the claimant has not such title or interest as would entitle him to recover under this Act; and shall disallow any claim to the extent to which in their opinion the damage in respect of which the claim was made has been occasioned or increased by any neglect or default of the claimant or of any person by whose acts he is affected or bound, or by the buildings or other matters in respect of which the claim was made, having been of an unnecessarily expensive kind, or improperly constructed, having regard to the liability of the district or any part thereof to subsidence. The brine pumpers shall be entitled to be heard before the board on all claims exceeding one thousand pounds.

Appendix.

XXV. A board may, by resolution passed at a meeting whereof not less than twenty-one days' notice specifying the objects of the meeting has been served on the members of the board, provide that the damage in any particular case, if in their opinion likely to recur or to be permanent or to continue for a number of years, shall be ascertained, settled, and paid for either once for all, or for such number of years as they think just, instead of being claimed from time to time.

Power to board
to commute
claims.

XXVI. Any sum awarded by a compensation board to be paid under any of the provisions of this Act shall be certified by the clerk of the board under his hand, and may, subject to the provisions of this Act, be recovered as a debt at the expiration of three months from the date of such certificate in the county court within whose jurisdiction the property to which the claim relates is situate.

Recovery of
sums awarded.

XXVII. (1.) If a board disallow a claim or any item thereof on the ground that the claimant had not, as respects such claim or item, such title or interest in the property damaged by subsidence as would entitle him to recover under this Act, the claimant may appeal in manner in this section mentioned on the ground that he had such title or interest.

Appeal on
questions of
title.

(2.) If a board allow a claim or any item thereof, any person assessed to the last rate made under this Act in and for the district may appeal in manner in this section mentioned against such allowance on the ground that the board ought to have decided that the claimant had not (as respects such claim or item) such title or interest as hereinbefore mentioned.

(3.) Notice of appeal under this section must be given in writing to the board at the meeting at which the decision appealed against is given, or within three weeks afterwards.

(4.) The appeal shall be brought in the county court within whose jurisdiction the land is situate, in manner prescribed by rules made or to be made by the authority for the time being empowered to make rules for the procedure and practice of county courts.

(5.) The judgment of the county court shall be binding on all persons, subject to an appeal to the Supreme Court according to the practice for the time being in use with respect to appeals from county courts.

(6.) The costs of any appeal under this section shall be in the discretion of the court in which the same are incurred.

(7.) If as a consequence of any decision on appeal under this section any damage is to be assessed, increased, or reduced, the claim shall stand remitted to the board to be adjudicated, and allowed, altered, increased, or reduced as the case may require.

XXVIII. Any person aggrieved who desires to question an order or determination of the board on the ground that it is erroneous in point of law, may apply to the board to state a special case, setting forth the facts of the case and the grounds on which the order or determination is questioned, and if the board decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

Special case.

The application shall be made and the case stated, heard, and determined in accordance with the provisions of section thirty-three, sub-section two of the Summary Jurisdiction Act, 1879, as if the case stated by the board were a case stated by a court of summary jurisdiction.

42 & 43 Vict.
c. 49.

Appendix.

XXIX. In no case shall there be any appeal, by special case or otherwise, where the amount claimed does not exceed one hundred pounds.

Limit of appeal.

Board may require compensation to be expended in repairs, &c.

XXX. A board may require any compensation in respect of lands, buildings, or works to be expended in the filling up of holes in such lands, or the restoration or repair of such buildings or works, and may refuse to pay such compensation except on their surveyor's certificate that the amount thereof has been properly expended in such filling up, restoration, or repair.

Power to purchase by agreement.

XXXI. Any board may, for the purposes of this Act, by agreement purchase or take on lease, sell, or exchange any lands within the district of such board, and may pull down and remove any buildings thereon which such board may consider in a dangerous state or likely to become so.

Power to purchase otherwise than by agreement.

XXXII. A board may by resolution passed at a meeting whereof not less than twenty-one days' notice specifying the objects of the meeting has been served on the members of the board resolve that it is desirable that no buildings should be erected on any land scheduled to such resolution, or that any buildings on such land should be pulled down and removed, or that for any good and sufficient reason any land scheduled to such resolution should be purchased, and thereupon all the powers to purchase land other than by agreement conferred upon a local authority by the Public Health Act, 1875, or any statutory modification thereof shall be vested in such board in respect of any land so scheduled, but subject to the conditions under which a local authority can exercise such powers.

33 & 39 Vict.
c. 55.

Power to sell.

XXXIII. A board may sell any land acquired under this Act subject to such conditions as to the future use of such land, and with such restrictions or prohibition as to building thereon as to such board may seem fit.

Power to keep register.

XXXIV. The board shall cause a book to be kept in which shall be entered from time to time particulars of the lands in respect of which the damage has been ascertained either once for all or for a number of years, and of any lands sold by the board subject to restrictive or prohibitive conditions, and the board shall provide an ordnance map or ordnance maps of convenient size containing such lands on which shall be shown from time to time by the use of colours the situation and extent of such lands. Such book and map or maps shall be kept at the offices of the board or such other place as shall be from time to time appointed by the board, and shall at all times be open to inspection without fee by all persons.

(v.) *Contracts prior to Act.*

Contracts prior to Act.

XXXV. Every brine pumper who after the passing of this Act supplies brine in pursuance of a contract made before the passing of this Act shall be entitled to be paid by the person to whom he supplies such brine the amount of the rate from time to time levied under this Act and paid by him in respect of such brine, unless such contract shall otherwise provide; and the amount of such rate may be recovered by such brine pumper from the person so supplied by him as aforesaid by action in any court of competent jurisdiction.

(vi.) *Rates.*

Estimates and rates.

XXXVI. (1.) Every board shall from time to time estimate the sums required to be levied in order to pay the claims under this Act, and of the amount per one thousand gallons of brine, estimated to be pumped or raised in their district, which will suffice to provide for such claims, and for the expenses of the board, and for the formation of the reserve fund hereinafter mentioned, subject to the provisions of this Act, and shall make a rate accordingly within their district.

(2.) Every rate made by the board shall be payable on demand at the expiration of one month after such rate has been made, and the sum assessed on any person by any such rate may be recovered by the board either as a civil debt summarily, or in like manner as a poor rate is now recoverable, or by action in any court of competent jurisdiction.

(3.) Any rate or rate book purporting to be made by authority of the board, and

to be sealed with their seal, or a certificate in writing, signed by the chairman or clerk, purporting to be given under this Act, and to be sealed with the seal of the board, shall be evidence that the person named therein is liable for the sum mentioned therein, and of all matters necessary to entitle the board to recover such sum. Appendix.

XXXVII. Every brine pumper in any compensation district shall be liable to be rated under this Act. Persons liable to rates.

XXXVIII. The rate or rates to be made by a board on the brine pumpers within their district shall not in the aggregate in any period of twelve months exceed the sum of threepence per one thousand gallons of brine pumped or raised in the district by each of such brine pumpers during the preceding twelve months. Limit of rate.

XXXIX. In assessing a rate in any district the board shall proceed as follows :— Mode of assessing rates.

- (i.) They shall ascertain and determine by means of the returns to be made under this Act, and by such other evidence (if any) as they think necessary or convenient, the total yield of brine in any year or other period in the district :
- (ii.) They shall fix what rate per one thousand gallons of brine will produce the necessary sum :
- (iii.) They shall assess every brine pumper liable to pay the rate according to the number of gallons returned by him, subject to revision by the board.

XL. It shall be lawful for a board from time to time by regulations under this Act to establish and adopt any system or systems of computation of the quantity of brine pumped or raised at any pumping station or other place where brine is pumped or raised ; but such regulations shall not be held to limit their right to be guided by other evidence. Computation of quantity of brine.

XLI. (1.) It shall be lawful for a board, from time to time, by bye-laws under this Act to prescribe forms and contents of returns, and the times (not being oftener than once a month for each pumping station) and the manner of making returns by any brine pumper in their district, or by any agent or servant of any such person, and to require such return to state (amongst other things) the quantities of brine pumped or raised at any pumping station. Returns to be made to board.

(2.) Any person required by a board to make any return under this Act or such bye-laws who fails to make such return, or wilfully or negligently makes a return untrue in any material respect, shall be liable on summary conviction to any penalty not exceeding twenty pounds for each offence.

(3.) A board may, by summons under their seal, require the attendance before them of any person liable to make any return under this Act, or who makes any claim under this Act, or of any agent or servant of any such person, and the production by him of any books or accounts, and may require a statutory declaration from any person so summoned touching any matter material to any question to be answered in any returns.

(4.) Any such person failing to attend, or to produce any such books or accounts, or to answer any questions put to him in pursuance of this section, shall be liable on summary conviction to a penalty not exceeding ten pounds.

XLII. Any person who deems himself aggrieved by any rate made under the provisions of this Act may appeal against such rate to the quarter sessions for the county on the ground that the quantity of brine in respect of which he ought to be assessed is less than the quantity in respect of which he is assessed. Appeal against rate.

The provisions of section thirty-one of the Summary Jurisdiction Act, 1879 42 & 43 Vict. c. 49. (as altered and amended by the Summary Jurisdiction Act, 1884), shall apply to appeals to quarter sessions under this Act as if the rate made under the provisions of this Act were a conviction or an order of a court of summary jurisdiction. 47 & 48 Vict. c. 43.

On appeals under this Act against any rate the court of quarter sessions shall have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any

Appendix. court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs on appeals with respect to rates for the relief of the poor; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeal: Provided that notwithstanding the quashing of any rate appealed against all moneys charged by such rate shall, if the court of quarter sessions think fit so to order, be levied as if no appeal had been made, and such moneys when paid shall be taken as payment on account of the next effective rate made or to be made under this Act.

Abatement of claims, postponement of payments, &c.

XLIII. (1.) If at any time it appears to a board that the funds applicable for compensation in any district are or will become insufficient to meet in full the claims made or to be made on such funds, the board may so declare, and thereupon the board shall make a *pro rata* abatement on the amounts which would otherwise be payable in respect of any claims to be made or allowed after such declaration.

(2.) Where it appears to a board that the compensation payable under this Act in any particular case is exceptional in character and amount, or that the immediate payment of the compensation in any particular case or cases will disable them from meeting the other claims on them, they may spread the payment of such compensation with or without interest over such number of years as they think just, having regard to all the circumstances of the case: Provided that it shall be lawful for the board, if and when they think fit, to make up in whole or in part the amount of any abatement made under this section out of any money which might otherwise have been carried to a reserve fund for such district.

(vii.) *Reserve Fund.*

Reserve fund.

XLIV. It shall be lawful for a board if they think fit to form a reserve fund for the purpose of meeting any exceptional claims, or providing for deficiencies which may occur in any year or years, and for that purpose in any period of twelve months to levy a greater rate in such district than the rate required for the claims and expenses estimated to be payable in such period, and they may apply any moneys from time to time standing to the credit of such reserve fund to meet any such exceptional claim or such deficiencies: Provided that the rate shall not in any case exceed the limit of threepence per one thousand gallons of brine, and that, if and so long as the reserve fund exceeds in amount the sum of the maximum rate leviable under this Act in one year, no additional rate shall be levied under this section. The interest from time to time accruing on moneys standing to the credit of a reserve fund shall be from time to time added to the compensation fund under this Act, and the full rate of threepence shall continue to be levied until the reserve fund amounts to at least one year's income at the maximum rate.

(viii.) *Miscellaneous.*

Powers of Local Government Board in-
spectors.

XLV. Inspectors of the Local Government Board shall for the purposes of any inquiry directed by the board under this Act have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts,^(a) and the Board may make orders as to the cost of such inquiries as under the Local Government Act, 1888, in the case of inquiries under that Act,^(b) and the cost of any provisional order issued by them, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of the Supreme Court on the application of any person named therein.

Audit of accounts of board.

XLVI. The accounts of the receipts and expenditure of every compensation board shall be audited by such auditor of accounts relating to the relief of the poor as the Local Government Board may from time to time appoint; and such auditor shall have the like powers as he would have under section two hundred and forty-seven

(a) See note (b), *ante*, p. 390.

(b) See section 87 (4) of that Act, *ante*, p. 525.

of the Public Health Act, 1875, in relation to the audit of accounts of an urban authority (not being the council of a borough); and the audit of the accounts of every such board shall be conducted in accordance with the provisions of that section as amended by the District Auditors Act, 1879, and with the like incidents and consequences.(c)

Appendix.

38 & 39 Vict.
c. 55.42 & 43 Vict.
c. 6.

XLVII. Any surveyor or person authorised by the board shall have power at all reasonable times to enter on, inspect, and to survey any land, buildings or premises in respect of which any claim has been made under this Act, and for the purpose of obtaining or verifying returns to enter any premises in respect of which any return is to be made under this Act; and any person who obstructs any such entry, inspection, or survey, shall be liable on summary conviction to a penalty not exceeding five pounds for every such offence.

Power of entry.

XLVIII. Sections one hundred and eighty-two to one hundred and eighty-six (both included) of the Public Health Act, 1875, shall apply to all bye-laws to be made by a board under this Act.(d)

Allowance of
bye-laws.

XLIX. Where the continued existence of a compensation board is represented to the Local Government Board to be unnecessary or inexpedient for carrying into effect the purposes of this Act, the Local Government Board may, after local inquiry, by a provisional order dissolve such compensation board, and shall in every such order make due provision for the discharge and settlement of all debts and liabilities owing by or to such compensation board, and for the complete winding-up of its affairs.

Power to dis-
solve compensa-
tion board.

L. Nothing in this Act shall entitle the following persons or bodies of persons to compensation from any compensation board, namely:—

Restriction of
right of action.

- (1.) Any railway or canal company: Provided always that a railway or canal company shall be entitled to compensation in respect of buildings or other property which are not in connexion with the railway or canal, and are not used for the purposes of the traffic thereon;
- (2.) Any gas or water company;
- (3.) Any county council, or municipal corporation;
- (4.) Any sanitary, highway, or other local authority;
- (5.) Any brine pumper;
- (6.) Any owner of land who receives brine rents, royalties for salt, or other remuneration or consideration in respect of the lands for which such brine rents, royalties for salt, or other similar remuneration or consideration are paid;
- (7.) Any owners or occupiers of salt or alkali works in respect of such works;
- (8.) The trustees of the River Weaver Navigation.

Except as provided by this Act no action or other proceeding shall be commenced or taken for or in respect of any damage or injury for which compensation has been claimed under this Act.

LI. Whereas certain owners of land and other persons resident in the county of Chester have subscribed or guaranteed a fund of one thousand two hundred and fifty pounds towards the costs and expenses of obtaining this Act: Be it therefore enacted that out of the first moneys raised under this Act by such compensation board or boards as shall comprise within their district or districts the urban sanitary districts of Northwich and Winsford respectively in the county of Chester there shall be paid to such owners and other persons towards the costs and expenses incurred by them preliminary to and of and incidental to the preparing and obtaining of this Act the sum of one thousand pounds.

Costs of Act.

The respective costs, charges, and expenses of the local boards for the districts of Northwich and Winsford, in relation to the passing of this Act, as taxed by

(c) See that section, *ante*, p. 326. The District Auditors Act is set out, *ante*, p. 1101.

(d) See those sections, *ante*, p. 256.

Appendix. — the taxing officer of the House of Lords or House of Commons, shall be respectively paid by and charged upon the district rates and funds of the said boards respectively.

Interpretation.

LII. In this Act—

“Owner” means the person for the time being receiving the rackrent of the land in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if the land were let at a rackrent:

“Rateable value” means the rateable value according to the valuation list for the time being in force, or if there is none, then according to the last rate made for the relief of the poor:

38 & 39 Vict.
c. 55.

“Sanitary authority” includes an urban sanitary authority and rural sanitary authority under the Public Health Act, 1875:(a)

“Brine pumper” means a person or company who pumps or raises brine from shafts, wells, springs, or mines:

“County” includes a county borough; and “county council” includes the mayor, aldermen, and burgesses of any such borough acting by the council.

Section 15.

SCHEDULE.

First meeting of board.

1. The first meeting of the board shall be held at such time and place as shall be fixed by the Local Government Board.

Chairman of board to preside at meetings.

2. The chairman of a board is entitled to preside at every meeting, but if at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be entitled to preside, and if neither the chairman nor vice-chairman be present, the members present shall choose some one of their number to be chairman of such meeting.

Summoning meeting.

3. The chairman may at any time call a meeting. If the chairman refuses to call a meeting after a requisition for that purpose, signed by five members of the board, has been presented to him, any five members of the board may forthwith on that refusal call a meeting. If the chairman (without so refusing) does not within seven days after such presentation call a meeting, any five members of the board may on the expiration of those seven days call a meeting.

Notice of meeting.

4. Three clear days at least before any meeting of a board a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the chairman or clerk of the board, shall be left or delivered by post at the usual place of abode of every member of the board. Want of service of the summons on any member of the board shall not affect the validity of a meeting.

Quorum.

5. To constitute a meeting of a board there must be at least one-third of the members personally present.

Decision of questions at meeting.

6. All acts of a board, and all questions coming or arising before the board, may be done and decided by the majority of such members of the board as are present and vote at a meeting held in pursuance of this Act.

In case of equality of votes the chairman of the meeting shall have a second or casting vote.

Minutes.

7. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed by the chairman of the meeting or of the next ensuing meeting.

Standing orders.

8. Subject to the foregoing provisions of this Schedule a board may from time to time make standing orders for the regulation of their proceedings and business and vary or revoke the same.

(a) See *ante*, p. 24.

THE FORGED TRANSFERS ACT, 1891.

Appendix.

(54 & 55 VICT. CAP. 43.)(b)

An Act for preserving Purchasers of Stock from Losses by Forged Transfers.

[27th August, 1891.]

* * * * *

I. (1.) Where a company or local authority(c) issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority,(d) they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney.(e) Power to make compensation for losses from forged transfer.

(2.) Any company or local authority(c) may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred,(f) to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

(3.) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority(c) may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4.) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5.) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

II. For the purposes of this Act—

Definitions.

The expression “company” shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter.

(b) This Act was occasioned by the decision in *Barton v. London and North Western Railway Company*, 24 Q. B. D. 77; 59 L. J. Q. B. 33; 62 L. T. (N.S.) 164; 38 W. R. 197. See the Amending Act, 55 & 56 Vict. c. 36, *post*. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(c) The expression “local authority” is defined by section 2, *post*.

(d) Local authorities keep registers of mortgages under section 237 of the Public Health Act, 1875, *ante*, p. 320. They may keep a register of nominal securities under section 23 of the Local Loans Act, 1875, *ante*, p. 1024. But this Act will apply also to shares, stock, or securities transferable by an instrument in writing or by an entry in the books of the local authority.

(e) “Whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person recovering such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid.” 55 & 56 Vict. c. 36, s. 2, *post*.

(f) “With a minimum charge equal to that for twenty-five pounds.” 55 & 56 Vict. c. 36, s. 3, *post*.

Appendix.

“Local
authority.”

The expression “local authority” shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to public local purposes.^(a)

Application to
industrial
societies, &c.

III. This Act shall apply to any industrial, provident, friendly, benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company.

Application to
harbour and
conservancy
authorities.

IV. (1.) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company.

(2.) For the purposes of this Act the expression “harbour authority” includes all persons, being proprietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3.) For the purposes of this Act the expression “conservancy authority” includes all persons entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

V. [*Application to colonial stock.*]

Short title.

VI. This Act may be cited as the Forged Transfers Act, 1891.

THE POST OFFICE ACT, 1891.

(54 & 55 VICT. CAP. 46.)(b)

An Act to amend the Post Office Acts and to make provision for the Service of the Post Office. [5th August, 1891.]

* * * * *

Power for local
authority to
contribute land
or money
towards new
post office.

VII. Where the council of any borough or the urban sanitary authority of any district consider that it would be beneficial to the inhabitants of such borough or district that any new post office should be on a more expensive site, or of a larger size, or of a more ornate building, or otherwise of a more expensive character, than the Postmaster-General would otherwise provide, such council or authority may contribute towards such new post office either by a grant of money or, with the consent of the Local Government Board, . . . by the appropriation of land belonging to the council or authority, or by the purchase of land for the purpose, and any costs incurred under this section may be paid in the case of a borough out of the borough fund or borough rate, and, in case of any urban sanitary district not a borough, out of the rate out of which the general expenses of the sanitary authority under the Public Health Act, 1875, are defrayed.^(c)

38 & 39 Vict.
c. 55.

45 & 46 Vict.
c. 50.

The council of any borough may borrow for the purposes of this section under section one hundred and six of the Municipal Corporations Act, 1882, and any enactment amending the same, and any other urban sanitary authority may borrow for the purposes of this section in like manner as if those purposes were purposes of the Public Health Act, 1875, and the provisions of that Act with respect to borrowing shall apply accordingly.^(d)

(a) This definition will include all sanitary authorities, urban and rural.

(b) Only three sections of this Act are included here as bearing on the powers and duties of sanitary authorities. Words relating only to Ireland are omitted. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(c) This rate will generally be the general district rate. See section 207 of the Public Health Act, 1875, *ante*, p. 276.

(d) See these provisions, *ante*, p. 314.

VIII. Where any rural sanitary authority consider that it would be for the benefit of any contributory place or places^(e) within their district that any post or telegraph office should be established or any additional facilities (postal or other) provided by the Postmaster-General in such place or places, such authority may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of such office or the provision of such facilities, and any costs incurred by the authority under such undertaking may be defrayed as special expenses legally incurred in respect of such contributory place or places, and shall be apportioned between such places if more than one, and sections two hundred and twenty-nine, two hundred and thirty, and two hundred and thirty-one of the Public Health Act, 1875,^(f) . . . shall apply accordingly.

Appendix.

Power to rural authorities to undertake to pay loss occasioned by extra postal facilities.

XI. In section sixteen of the Sale of Food and Drugs Act, 1875, respecting an article forwarded to the analyst through the post office the words "registered parcel" shall be substituted for the words registered letter.^(g)

Forwarding of articles for analysis.
38 & 39 Vict.
c. 63.

THE SCHOOLS FOR SCIENCE AND ART ACT, 1891.

(54 & 55 VICT. CAP. 61.)

An Act to facilitate the transfer of Schools for Science and Art to Local Authorities.
[5th August, 1891.]

I. (1.) The managers of any school for science and art, or for science or for art, or of any institution to which the Literary and Scientific Institutions Act, 1854,^(h) applies, may make an arrangement with any local authority within the meaning of the Technical Instruction Act, 1889,⁽ⁱ⁾ for transferring the school or institution to that authority, and the local authority may assent to any such arrangement and give effect thereto, subject to the provisions of that Act.

Transfer of school for science and art or literary or scientific institution to local authority.
17 & 18 Vict.
c. 112.
52 & 53 Vict.
c. 76.
33 & 34 Vict.
c. 75.

(2.) The provisions of section twenty-three of the Elementary Education Act, 1870, with respect to arrangements for the transfer of schools shall apply in the case of arrangements for the transfer of schools or institutions in pursuance of this section, with this modification, that for the purposes of transfers to a local authority references to the school board shall be construed as references to the local authority and references to the Education Department as references to the Department of

(e) As to a contributory place, see section 229 of the Public Health Act, 1875, *ante*, p. 308. By the Post Office Amendment Act, 1895 (58 & 59 Vict. c. 18), it is now also enacted that the parish council of a parish, or where there is no parish council the parish meeting, shall have the like powers as are given to a rural sanitary authority under section 8 of the Post Office Act, 1891, to guarantee the Postmaster-General against loss sustained by the provision of postal or other facilities as named in that section, and any expenses incurred by the council or meeting under such undertaking shall be deemed to be expenses of the council or meeting (as the case may be) within the provisions of the Local Government Act, 1894.

(f) See these sections, *ante*, pp. 310—314.

(g) See the section referred to, *ante*, p. 1012.

(h) That Act applies to institutions established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries, reading rooms for general use or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

(i) See section 4 of that Act, *ante*, p. 1271. A local authority is there defined to include the council of a borough and the urban authority in an urban district.

Appendix. Science and Art, and references to a school shall, in the case of an institution not being a school, be construed as references to the institution.(a)

(3.) In this section the expression "managers" includes all persons who have the management of any school or institution, whether the legal interest in the site and buildings of the school or institution is or is not vested in them.

Short title.

II. This Act may be cited as the Schools for Science and Art Act, 1891.

THE HIGHWAYS AND BRIDGES ACT, 1891.

(54 & 55 VICT. CAP. 63.)(b)

An Act to confer further powers on County Councils and other Authorities with respect to Main Roads and other Highways and Bridges. [5th August, 1891.]

* * * * *

Short title.

I. This Act may be cited as the Highways and Bridges Act, 1891.

Extent of Act.

II. This Act shall not apply to Scotland or Ireland or the county of London.

Agreement between highway authorities for improvement of roads and bridges.

III. The council of any administrative county,(c) and any highway authority or authorities,(d) and the council of any adjoining county, may from time to time make and carry into effect agreements with each other for or in relation to the construction, reconstruction, alteration or improvement, or the freeing from tolls, of any main road or other highway, or of any bridge (including the approaches thereto), wholly or partly situate within the jurisdiction of any one or more of the party or parties to the agreement.(e)

All expenses incurred by any such county council or highway authority, in pursuance of this section, shall be defrayed as part of the expenses incurred in relation to the maintenance, repair, improvement, or enlargement of bridges, main roads, or other highways by such council or highway authority,(f) in such proportions as shall be determined by any such agreement as aforesaid, and any powers of borrowing, applicable to the raising of any fund for the payment of any such expenses as aforesaid, shall be applicable accordingly :

Provided that if a highway board think it just that any parish or parishes specially benefited by any construction, reconstruction, alteration, or improvement under this section should bear the expense thereof, or any part of such expense, they may, with the approval of the county council of the county within which their highway district is situate, and with the assent of the inhabitants of such parish or parishes in vestry assembled, charge such expense, or such part thereof as they may think just, exclusively on such parish or parishes.

(a) Under the section here applied the consent of the managers by resolution and of the annual subscribers at a special meeting must be given to the transfer. The Department of Science and Art will hear and decide any objections to the transfer. Reference should be made to the section, which is not here set out because of its length.

(b) As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(c) See the definition, *ante*, p. 526.

(d) The expression "highway authority" includes an urban sanitary authority (see *ante*, p. 527); and a rural sanitary authority. See section 25 of the Local Government Act, 1894, *ante*, p. 723.

(e) This provision will enable an urban authority to make an agreement for the making or improvement of a road outside their district if they think fit.

(f) In urban districts the expenses will be defrayed out of the general district rate or the highway rate as determined by section 216 of the Public Health Act, 1875, *ante*, p. 293.

IV. Section sixteen of the Highways and Locomotives Amendment Act, 1878, shall apply to any part of a main road in any county, and so much of such section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, is hereby repealed, but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained.^(g)

Appendix.
Power to reduce
main road to
status of ordi-
nary highway.
41 & 42 Vict.
c. 77.

V. [Contracts for supply of road material not to disqualify for election to county council.]

VI. Words and expressions to which meanings are assigned by the Local Government Act, 1888, have in this Act the same respective meanings, and in this Act the word "highway" includes any public bridle path or footway.^(h)

Construction of
Act.
51 & 52 Vict.
c. 41.

THE MARKETS AND FAIRS (WEIGHING OF CATTLE) ACT, 1891.

(54 & 55 VICT. CAP. 70.)⁽ⁱ⁾

An Act to amend the Markets and Fairs (Weighing of Cattle) Act, 1887.

[5th August, 1891.]

WHEREAS it is expedient to amend the Markets and Fairs (Weighing of Cattle) Act, 1887 (hereinafter referred to as the principal Act):

50 & 51 Vict.
c. 27.

* * * * *

I. As from the passing of this Act the powers under section nine of the principal Act^(k) of the Local Government Board as to England and Wales . . . shall be transferred to and vest in the Board of Agriculture. . . .

Transfer of
powers under
50 & 51 Vict.
c. 27, s. 9.

II. (1.) The market authority of every market and fair to which the principal Act for the time being applies^(l) shall, unless exempted^(m) by order of the Board of Agriculture from the requirements of this section, provide and maintain to the satisfaction of the Board sufficient and suitable accommodation for weighing cattle⁽ⁿ⁾.

Amendment of
50 & 51 Vict.
c. 27, s. 4, as to
accommodation
for weighing
cattle.

(g) See this section, *ante*, p. 1092.

(h) See the interpretation clause, *ante*, p. 526. The latter part of this section was quite unnecessary, for a public bridle path or footway is as much a highway as a carriage road. See *R. v. Salop*, 13 East, 97.

(i) This Act amends 50 & 51 Vict. c. 27, *ante*, p. 1207. Sections, or parts of sections, relating to Scotland or Ireland only are omitted throughout this Act. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(k) The powers here referred to are the powers to exempt certain markets and fairs from the provisions of the Act. See the section, *ante*, p. 1209.

(l) See section 2 of the principal Act, *ante*, p. 1207, as to the market authority and the markets to which the Act applies.

(m) See section 9 of the principal Act, *ante*, p. 1209.

(n) In determining the sufficiency and suitability of the accommodation for weighing cattle, the Board of Agriculture will have regard to the following, amongst other considerations, namely—(a) the convenience of the situation of the weighing machine to buyers and sellers; (b) the supply of proper pens for keeping cattle together, both on entering and on leaving the machine; (c) the size of the machine and its capacity for weighing at one and the same time, if required, a sufficient number of cattle, including store as well as fat stock, so as not to unduly delay the business of the market, fair, or auction. In cases where it is proposed to set up new weighing machines, it is desirable to communicate beforehand with the board as to the sufficiency of the proposed accommodation. *Circular Letter of the Board of Agriculture, dated 25th November, 1891.*

Appendix.

Statistics as to weight and sale of cattle.

(2.) Default in complying with the requirements of this section shall be deemed default in complying with the requirements of section four of the principal Act(a)

III. (1.) The market authority of every market and fair held in any of the places mentioned in the schedule to this Act shall send to the Board of Agriculture returns, at such intervals, and in such form and with such particulars as the Board of Agriculture by order prescribe, showing, so far as the market authority can ascertain the same, the number of cattle entering, and the number and weight of cattle weighed at the market or fair, and the price of the cattle sold thereat. Such market authority may, for the purpose of making a prescribed return, cause any cattle which have been sold at the market to be weighed without fee.

(2.) The Board of Agriculture shall publish the returns so sent, or abstracts thereof, or extracts therefrom, in such manner as they think most expedient for the information of the public.

(3.) If a market authority wilfully makes default in complying with the requirements of this section, it shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, or in case of a continuing offence to a fine not exceeding ten pounds for every day during which the offence continues.

(4.) If any person makes any false or fraudulent statement in any return made in pursuance of this section he shall be guilty of a misdemeanor.

(5.) The Board of Agriculture may from time to time vary or add to the list of places in the schedule to this Act.

Application of Act to auction marts.

IV. (1.) An auctioneer shall not, unless exempted by order of the Board of Agriculture from the requirements of this section, sell cattle at any mart where cattle are habitually or periodically sold unless there are provided at that mart similar facilities for weighing cattle as are required by the principal Act and this Act in the case of cattle sold at a market or fair to which the principal Act applies.

(2.) Every auctioneer who in any place from which returns are required to be made under this Act sells cattle at any such mart as aforesaid shall, unless exempted as aforesaid, make the like returns to the Board of Agriculture with respect to cattle entering, weighed, and sold at that mart as are required by this Act to be made by a market authority, and shall be subject to the like penalty for making any false or fraudulent statement in any such return.

(3.) If any such auctioneer makes default in complying with the requirements of this section, the auctioneer, or, if he is in the employment of any person, the person by whom he is employed, shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, or in the case of a continuing offence a fine not exceeding ten pounds for every day during which the offence continues.

(4.) This section shall not come into operation until the first day of January, one thousand eight hundred and ninety-two.

V. [*Application to Ireland.*]

Construction and short title

VI. This Act shall be construed as one with the principal Act, and may be cited as the Markets and Fairs (Weighing of Cattle) Act, 1891, and the principal Act and this Act may be cited together as the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

(a) Under section 4 of the principal Act the only result of default was to make it illegal to take tolls for cattle, and to render any demand of tolls an offence punishable by fine. Under the provision in the text default in providing weighing accommodation will apparently render the market authority liable to a fine whether they demand or receive tolls or not.

SCHEDULE.

Appendix.

ENGLAND.

Ashford.	London (Metropolitan Cattle Market).
Birmingham.	Newcastle-on-Tyne.
Bristol.	Norwich.
Leicester.	Salford.
Leeds.	Shrewsbury.
Lincoln.	Wakefield.
Liverpool (Stanley Market).	York.

THE MORTMAIN AND CHARITABLE USES ACT, 1891.

(54 & 55 VICT. CAP. 73.) (b)

An Act to amend the Mortmain and Charitable Uses Act, 1888, and the Law relating to Mortmain and Charitable Uses. [5th August, 1891.]

* * * * *

I. This Act may be cited as the Mortmain and Charitable Uses Act, 1891.

Short title.

II. This Act shall not extend to Scotland or Ireland.

Extent of Act.

III. "Land" in the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land; and the definition of land contained in the Mortmain and Charitable Uses Act, 1888, is hereby repealed.(c)

Definition of "land."
51 & 52 Vict. c. 42.

IV. In this Act the word "assurance" shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Meaning of "assurance."

V. Land may be assured by will to or for the benefit of any charitable use,(d) but except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners.

Land assured by will for a charitable purpose to be sold.

VI. So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners

Land after expiration of time limited for sale to be sold

(b) This Act amends 51 & 52 Vict. c. 42, *ante*, p. 1249. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(c) This supersedes the definition of "land" in section 10 of the principal Act, *ante*, p. 1253. With regard to money secured on land, it may be noted that corporation debenture stock charged on the revenue of all landed and other property of the corporation was held not to be an interest in land under 9 Geo. 2, c. 36, s. 3. *In re Pickard, Elmsley v. Mitchell* [1894], 2 Ch. 88; 63 L. J. Ch. 254; 70 L. T. (N.S.) 395; 42 W. R. 375; 10 T. L. R. 290.

(d) A testator, who died after the passing of this Act, by his will made before the passing of this Act, gave to a charity such part of the residue as may by law be given for charitable purposes, with a separate gift of the remainder to A. Held, that the Act applied, and in the absence of a contrary intention the whole of the residue, realty as well as personality, went to the charity. *In re Bridger, Brompton Hospital for Consumption v. Lewis* [1894], 1 Ch. 297; 63 L. J. Ch. 186; 70 L. T. (N.S.) 204; 42 W. R. 179.

Appendix.

by order of
Charity Com-
missioners.

16 & 17 Vict.
c. 137.

Personal estate
by will directed
to be laid out in
land not to be
so laid out.

Power to retain
land in certain
cases.

Application of
Act.

Saving.

shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land, or removing such trustees and appointing others, and may provide by any such order for the payment of the proceeds of sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same respectively, to any orders of the said commissioners made thereunder.

VII. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable uses shall, except as hereinafter provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land.

VIII. It shall be lawful for the High Court, or any judge thereof sitting at chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land.

IX. This Act shall only apply to the will of a testator dying after the passing of this Act.

X. Nothing in this Act contained shall limit or affect the exemptions contained in Part III. of the Mortmain and Charitable Uses Act, 1888, or apply to any land or personal estate to be laid out in the purchase of land acquired under any assurance to which such exemptions or any of them apply, or shall exclude or impair any jurisdiction or authority which might otherwise be exercised by a court or judge of competent jurisdiction or by the Charity Commissioners.

THE FACTORY AND WORKSHOP ACT, 1891.

(54 & 55 VICT. CAP. 75.) (a)

An Act to amend the Law relating to Factories and Workshops. [5th August, 1891.]

41 Vict. c. 16.

WHEREAS it is expedient to amend the Factory and Workshop Act, 1878 (hereinafter referred to as the principal Act):

* * * * *

Sanitary Provisions.

Powers of
Secretary of
State as to
sanitary provi-
sions in work-
shops.

I. (1.) If the Secretary of State is satisfied that the provisions of the law relating to public health as to effluvia arising from any drain, privy, or other nuisance, or with respect to cleanliness, ventilation, overcrowding, or limewashing^(b) are not observed in any workshops^(c) or class of workshops (including workshops conducted

(a) See 41 & 42 Vict. c. 16, *ante*, p. 1080, and 46 & 47 Vict. c. 53, *ante*, p. 1175. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894, 57 & 58 Vict. c. 56.

(b) See the Public Health Act, 1875, s. 91, *ante*, p. 108, for the provisions as to cleanliness, ventilation, and overcrowding, and 41 & 42 Vict. c. 16, s. 33, *ante*, p. 1081, for the provisions as to limewashing.

(c) For the definition of a workshop, see 41 & 42 Vict. c. 16, s. 93.

on the system of not employing any child, young person, or woman therein) or laundries, he may, if he thinks fit, by order, authorise and direct an inspector or inspectors under the principal Act to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing the said provisions.

(2.) An inspector authorized in pursuance of this section shall, for the purpose of his duties, have the same powers with respect to workshops and laundries to which this section applies, as he has under the principal Act as amended by this Act with respect to factories,^(d) and may for the same purpose take the like proceedings for punishing or remedying any default in compliance with the said provisions of the law relating to public health as might be taken by the sanitary authority of the district in which the workshops or laundries are situate, and shall be entitled to recover from that sanitary authority all such expenses in and about any proceedings in respect of such workshops or laundries as he may incur and are not recovered from any other person, and have not been incurred in any unsuccessful proceedings.

II. (1.) Section four of the principal Act^(e) shall apply to workshops conducted on the system of not employing any child, young person, or woman therein, and to laundries.

Appendix.

Powers of factory inspector after notice to sanitary authority.

(2.) Where notice of an act, neglect, or default is given by an inspector under the said section four, as amended by this Act, to a sanitary authority, and proceedings are not taken (*within a reasonable time*)^(f) for punishing or remedying the act, neglect, or default, the inspector may take the like proceedings for punishing or remedying the same as the sanitary authority might have taken, and shall be entitled to recover from the sanitary authority all such expenses in and about the proceedings as the inspector incurs and are not recovered from any other person, and have not been incurred in any unsuccessful proceedings.

III. (1.) Sections three and thirty-three of the Factory and Workshop Act, 1878^(g) (which relate to cleanliness, ventilation, and overcrowding in, and lime-washing of, factories and workshops), shall cease to apply to workshops.

Enforcement by sanitary authority of sanitary provisions as to workshops. 41 & 42 Vict. c. 16. 54 & 55 Vict. c. 76.

(2.) For the purpose of their duties with respect to workshops (not being workshops to which the Public Health (London) Act, 1891, applies), a sanitary authority and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings or otherwise, as an inspector under the principal Act.

(3.) If any child, young person, or woman, is employed in a workshop, and the medical officer of the sanitary authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector of the district.

IV. (1.) Every workshop as defined by the principal Act (including any workshop conducted on the system of not employing any child, young person, or woman therein), and every workplace within the meaning of the Public Health Act, 1875,^(h) shall be kept free from effluvia arising from any drain, watercloset, earth-closet, privy, urinal, or other nuisance, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.⁽ⁱ⁾

Cleanliness and lime-washing of workshops. 38 & 39 Vict. c. 55.

(2.) Where on the certificate of a medical officer of health or inspector of nuisances it appears to any sanitary authority that the limewashing, cleansing, or purifying of any such workshop, or of any part thereof, is necessary for the health of the persons employed therein, the sanitary authority shall give notice in writing to the owner or occupier of the workshop to limewash, cleanse, or purify the same or part thereof, as the case may require.

(d) For these powers see 41 & 42 Vict. c. 16, s. 4, *ante*, p. 1080.

(e) *Ante*, p. 1080.

(f) The words "*within one month*" are now substituted for those in italics by 57 & 58 Vict. c. 37, s. 3, sub-s. (2), *post*.

(g) *Ante*, p. 1080.

(h) That Act contains no definition of a workplace.

(i) That is, under ss. 91—98 of the Public Health Act, 1875, *ante*, p. 108.

Appendix.

(3.) If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a fine not exceeding ten shillings for every day during which he continues to make default, and the sanitary authority may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

(4.) This section shall not apply to any workshop or workplace to which the Public Health (London) Act, 1891, applies.

54 & 55 Vict.
c. 76.

Amendment of
41 & 42 Vict.
c. 16, s. 3, as to
sanitary provisions.

V. In section three of the principal Act, (a) for the word "privy" shall be substituted the words "watercloset, earth-closet, privy, urinal," and for the words "injurious to the health of the persons employed therein" shall be substituted the words "dangerous or injurious to the health of the persons employed therein."

*Safety.*VI. [*Amendment of 41 & 42 Vict. c. 16, s. 5, as to fencing of machinery.*]

Provision
against fire.

VII. (1.) Every factory of which the construction is commenced after the first day of January, one thousand eight hundred and ninety-two, (b) and in which more than forty persons are employed, shall be furnished with a certificate from the sanitary authority of the district in which the factory is situated that the factory is provided on the storeys above the ground floor with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and a factory not so furnished shall be deemed not to be kept in conformity with the principal Act, and it shall be the duty of the sanitary authority to examine every such factory, and on being satisfied that the factory is so provided to give such a certificate as aforesaid.

(2.) With respect to all factories to which the foregoing provisions of this section do not apply, (c) and in which more than forty persons are employed, it shall be the duty of the sanitary authority of every district, as soon as may be after the passing of this Act, and afterwards from time to time, to ascertain whether all such factories within their district are provided with such means of escape as aforesaid, and, in the case of any factory which is not so provided, (d) to serve on the person being within the meaning of the Public Health Act, 1875, the owner (e) of the factory a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry out the same before a specified date, and thereupon such owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and, unless such requirements are so complied with, such owner shall be liable to a fine not exceeding one pound for every day that such non-compliance continues. In case of a difference of opinion between the owner of the factory and the sanitary authority, the difference shall, on the application of either party, (f) be referred to arbitration, and thereupon the provisions of the First Schedule to this Act shall have effect, except that the parties to the arbitration shall be the sanitary authority on the one hand and the owner on the other, and the award on the arbitration shall be binding on the parties thereto. (g) If the owner alleges that the occupier of the factory ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the

38 & 39 Vict.
c. 75.

(a) *Ante*, p. 1080.

(b) And every workshop constructed after 1895. See 55 & 59 Vict. c. 37, s. 10, sub-s. (4), *post*.

(c) That is, all factories commenced before 1st January, 1892.

(d) See also, as to the power of an inspector to enforce the provisions of this section, 58 & 59 Vict. c. 37, s. 10 (5), *post*.

(e) See the definition of "owner," *ante*, p. 6.

(f) The application to refer must be made within one month after the time when the difference arises. 58 & 59 Vict. c. 37, s. 11 (1), *post*.

(g) The notice is to be discharged, amended, or confirmed in accordance with the award. 58 & 59 Vict. c. 37, s. 11 (2), *post*.

factory is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case. Appendix.

(3.) All expenses incurred by a sanitary authority in the execution of this section shall be defrayed—

(a.) In the case of an authority of an urban district, as part of their expenses of the general execution of the Public Health Act, 1875; (h) and

(b.) In the case of an authority of a rural district, as special expenses incurred in the execution of the Public Health Act, 1875; and such expenses shall be charged to the contributory place in which the factory is situate. (i)

(4.) In the application of this section to the administrative county of London, the London County Council shall take the place of the sanitary authority, and their expenses in the execution of this section shall be defrayed as part of their expenses in the management of the Metropolitan Building Act, 1855, and the Acts amending the same. 18 & 19 Vict.
c. 122.

Special Rules and Requirements. (k)

VIII. (1.) Where the Secretary of State certifies that in his opinion any machinery or process or particular description of manual labour used in a factory or workshop (other than a domestic workshop) is dangerous or injurious to health, (l) or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, or that the provision for the admission of fresh air is not sufficient, or that the quantity of dust generated or inhaled in any factory or workshop is dangerous or injurious to health, the chief inspector may serve on the occupier of the factory or workshop a notice in writing, either proposing such special rules or requiring the adoption of such special measures as appear to the chief inspector to be reasonably practicable and to meet the necessities of the case. Special rules and requirements as to dangerous and unhealthy incidents of employment.

(2.) Unless within twenty-one days after receipt of the notice the occupier serves on the chief inspector a notice in writing that he objects to the rules or requirement, the rules shall be established, or, as the case may be, the requirement shall be observed.

(3.) If the notice of objection suggests any modification of the rules or requirement, the Secretary of State shall consider the suggestion and may assent thereto with or without any further modification which may be agreed on between the Secretary of State and the occupier, and thereupon the rules shall be established, or, as the case may be, the requirement shall be observed, subject to such modification.

(4.) If the Secretary of State does not assent to any objection or modification suggested as aforesaid by the occupier, the matter in difference between the Secretary of State and the occupier shall be referred to arbitration under this Act, and the date of the receipt of the notice of objection by the Secretary of State shall

(h) See section 207 of the Public Health Act, 1875, *ante*, p. 276.

(i) See section 229 of the Public Health Act, 1875, *ante*, p. 308.

(k) Sections 8 to 12 inclusive of this Act are applied to docks, &c., by 58 & 59 Vict. c. 37, s. 23, and to workshops conducted on the system of not employing any child, young person, or woman therein, by s. 28 of the same Act, *post*.

(l) Certificates to this effect have been issued by the Secretary of State with regard to processes in the manufacture of white lead, paints, colours, and the extraction of arsenic, and enamelling of iron plates (St. R. & O. 1892, p. 473), in the manufacture of lucifer matches except such as are made with red or amorphous phosphorus (*ibid.*), the manufacture of earthenware, explosives in which di-nitro-benzole is used, chemical works, and quarries (*ibid.*, p. 474), the manufacture of red, orange, or yellow lead, lead smelting, the tinning and enamelling of iron hollow ware, electric accumulator works (St. R. & O. 1894, p. 121), flax mills and cotton factories (*ibid.*), brass mixing and casting (*ibid.*, p. 122), tinning and enamelling of metal hollow ware and cooking utensils (*ibid.*, p. 123).

Appendix. be deemed to be the date of the reference, and the rules shall be established, or the requisition shall have effect, as settled by an award on arbitration.^(a)

(5.) Any notice under this section may be served by post.

(6.) With respect to arbitration under this Act the provisions in the First Schedule to this Act shall have effect.

(7.) No person shall be precluded by any agreement from doing, or be liable under any agreement to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of this section.

Penalty for
contravention of
special rules or
requirement.

IX. (1.) If any person who is bound to observe any special rules established for any factory or workshop under this Act acts in contravention of, or fails to comply with, any such special rule, he shall be liable on summary conviction to a fine not exceeding two pounds; and the occupier of the factory or workshop shall also be liable on summary conviction to a fine not exceeding ten pounds, unless he proves that he had taken all reasonable means, by publishing, and to the best of his power enforcing, the rules to prevent the contravention or non-compliance.

(2.) A factory or workshop in which there is a contravention of any requirement made under this Act shall be deemed not to be kept in conformity with the principal Act.^(b)

Amendment of
special rules.

X. (1.) After special rules are established under this Act in any factory or workshop, the Secretary of State may from time to time propose to the occupier of the factory or workshop any amendment of the rules or any new rules; and the provisions of this Act with respect to the original rules shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to the original rules.

(2.) The occupier of any factory or workshop in which special rules are established may from time to time propose in writing to the chief inspector, with the approval of the Secretary of State, any amendment of the rules or any new rules, and the provisions of this Act with respect to a suggestion of an occupier for modifying the special rules proposed by a chief inspector shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to such a suggestion.

Publication of
special rules.

XI. (1.) Printed copies of all special rules for the time being in force under this Act in any factory or workshop shall be kept posted up in legible characters in conspicuous places in the factory or workshop where they may be conveniently read by the persons employed. In a factory or workshop in Wales or Monmouthshire the rules shall be posted up in the Welsh language also.

(2.) A printed copy of all such rules shall be given by the occupier to any person affected thereby on his or her application.

(3.) If the occupier of any factory or workshop fails to comply with any provision of this section, he shall be liable on summary conviction to a fine not exceeding ten pounds.

(4.) Every person who pulls down, injures, or defaces any special rules when posted up in pursuance of this Act, or any notice posted up in pursuance of the special rules, shall be liable on summary conviction to a fine not exceeding five pounds.

Certified copies
of special rules
to be evidence.

XII. An inspector shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules for the time being established under this Act for any factory or workshop, and a copy so certified shall be evidence (but not to the exclusion of other proof) of those special rules, and of the fact that they are duly established under this Act.

* * * * *

(a) Workmen may be represented on an arbitration under this section. See 58 & 59 Vict. c. 37, s. 12, *post*.

(b) The occupier will be liable to a fine not exceeding 10*l*. under section 81 of 41 & 42 Vict. c. 16, *ante*, p. 1084.

*Period of Employment.(c)***Appendix.**

XIV. (1.) The report required by section sixty-six of the principal Act^(d) respecting the employment of a child, young person, or woman in pursuance of an exception relating to the employment overtime, must be sent to an inspector not later than eight o'clock in the evening on which the child, young person, or woman is employed in pursuance of the exception. Notice as to overtime.

(2.) Where, under the said section sixty-six, the occupier of a factory or workshop is required to make an entry and report respecting the employment overtime of a child, young person, or woman in the factory or workshop, he shall cause a notice containing the prescribed particulars respecting the employment to be kept affixed in the factory or workshop during the prescribed time, and in default of so doing shall be liable, on summary conviction, to a fine not exceeding five pounds.

* * * * *

Miscellaneous.(e)

* * * * *

XXVI. (1.) Section seventy-five of the principal Act (which requires notice to be given of the occupation of a factory) shall apply to a workshop (including any workshop conducted on the system of not employing any child, young person, or woman therein) in like manner as it applies to a factory. Notice of opening workshop.

(2.) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the sanitary authority of the district in which the workshop is situate.^(f)

XXVII. (1.) The occupier of every factory or workshop (including any workshop conducted on the system of not employing any child, young person, or woman therein) and every contractor employed by any such occupier in the business of the factory or workshop shall, if so required by the Secretary of State by an order made in accordance with section sixty-five of the principal Act, and subject to any exceptions mentioned in the order, keep in the prescribed form and with the prescribed particulars lists showing the names of all persons directly employed by him, either as workman or as contractor, in the business of the factory or workshop, outside the factory or workshop, and the places where they are employed, and every such list shall be open to inspection by any inspector under the principal Act or by any officer of a sanitary authority.^(g) Lists of out-workers.

(2.) In the event of a contravention of this section by the occupier of a factory or workshop, or by a contractor, the occupier or contractor shall be liable to a fine not exceeding forty shillings.

XXVIII. The fine imposed on a conviction under sections sixty-eight, eighty-one, eighty-two, and eighty-three of the principal Act,^(h) for any offence in relation to a factory, shall in the case of a second or subsequent conviction for the same offence Minimum penalties in certain cases.

(c) Sections 13 and 15—20 relate to period of employment, holidays, and conditions of employment, and are beyond the scope of this Work. Section 21 merely effects a repeal in section 61 of the principal Act, and is sufficiently referred to in the notes to that section.

(d) See this section, *ante*, p. 1083.

(e) Sections 22 and 25 are omitted as being beyond the scope of this Work.

(f) See section 41 of the Act of 1895 (58 & 59 Vict. c. 37), *post*.

(g) An order has been made under this section, dated 31st October, 1892 (St. R. & O. 1892, p. 476; 56 J. P. 731). It applies to the manufacture of articles of wearing apparel, of electro-plate, of files, and to cabinet and furniture making and upholstery work. A circular has also been issued by the Local Government Board desiring sanitary authorities to give publicity to the order and to follow it up by active steps for the inspection of the workshops and houses where the outworkers are employed. The section itself has been since amended and extended by 58 & 59 Vict. c. 37, s. 42, *post*, and both sections now apply to any place from which any work of making wearing apparel is given out, and to the occupier and every contractor employed by him.

(h) Sections 81, 82, and 83 are set out, *ante*, p. 1084.

Appendix. within two years from the last conviction for that offence, be not less than one pound for each offence.

Limitation of time for summary proceedings.

XXIX. In summary proceedings for offences and fines under the principal Act as amended by any subsequent Act, an information may be laid within three months after the date at which the offence comes to the knowledge of [*a factory inspector*](a) or in case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it shall not be laid after the expiration of six months from the commission of the offence.

Amendment of 41 & 42 Vict. c. 16, s. 92.

XXX. Section ninety-two of the principal Act shall apply to a workshop in like manner as it applies to a factory.(b)

Amendment of 41 & 42 Vict. c. 16, s. 93.

XXXI. In section ninety-three of the principal Act for the words "a place solely used as a dwelling shall not be deemed to form part of the factory or workshop for the purposes of this Act," shall be substituted the words "a room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act."

Saving for persons employed in process of fruit cleaning.

XXXII. Nothing in the principal Act as amended by this Act shall apply to the process of cleaning and preparing fruit so far as is necessary to prevent the spoiling of the fruit on its arrival at a factory or workshop during the months of June, July, August, and September.(c)

Amendment of 46 & 47 Vict. c. 53, s. 18.

XXXVI. The expression "retail bakehouse" in the Factory and Workshop Act, 1883, shall not include any place which is a factory within the meaning of the principal Act.(d)

Definitions of "machinery" and "domestic workshop."

XXXVII. (1.) For the purposes of the principal Act and this Act the expression "machinery" shall include any driving strap or band, and the expression "process" shall include the use of any locomotive.

(2.) In this Act the expression "domestic workshop" means a workshop to which section sixteen of the principal Act applies.(e)

XXXVIII. [*Amendment of 41 & 42 Vict. c. 16, Sch. IV.*]

Repeal.

XXXIX. The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

Provided that any special rules or requirements made under any enactment repealed by this Act shall continue to have effect as if made under this Act, and the provisions of this Act shall apply thereto accordingly.

Commencement of Act.

XL. This Act shall, except where it is otherwise expressed, come into operation on the first day of January, one thousand eight hundred and ninety-two.

Short title and construction. 41 & 42 Vict. c. 16. 46 & 47 Vict. c. 53. 52 & 53 Vict. c. 62.

XLI. (1.) This Act may be cited as the Factory and Workshop Act, 1891, and shall be construed as one with the Factory and Workshop Act, 1878.

(2.) The Factory and Workshop Act, 1878, the Factory and Workshop Act, 1883, and the Cotton Cloth Factories Act, 1889, may, together with this Act, be cited collectively as the Factory and Workshops Acts, 1878 to 1891.

(a) The words "the factory inspector for the district within which the offence is charged to have been committed," are substituted for the words "a factory inspector" in this section by section 44 (2) of the Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37).

(b) See this section, *ante*, p. 1087.

(c) Section 33 relates to Scotland, section 34 to Ireland, and section 35 has no bearing on the subjects treated of in this Work.

(d) See the definition in the Act referred to, *ante*, p. 1176.

(e) Sect. 16 of the principal Act, as to the period of employment and time for meals for children and young persons in domestic workshops, applies where persons are employed at home, that is to say, in a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of that Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there.

SCHEDULES.

Appendix.

FIRST SCHEDULE.(f)

Sections 7, 8.

1. The parties to the arbitration are in this Schedule deemed to be the occupiers of the factory or workshop on the one hand and the chief inspector, on behalf of the Secretary of State, on the other.

2. Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator.

3. No person shall act as arbitrator or umpire under this Act who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

4. The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of that party.

5. The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this Schedule.

6. If within the said fourteen days either of the parties fail to appoint an arbitrator the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

7. If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other person to act in his place; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

8. In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred.

9. If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned.

10. The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

11. If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place.

12. If the arbitrators refuse or fail, or for seven days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the quarter sessions within the jurisdiction of which the factory or workshop is situate.

13. The decision of every umpire on the matters referred to him shall be final.

14. If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

(f) See sections 7, sub-section (2) and 8, (4), *ante*.

Appendix.

15. Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.
16. The arbitrators and the umpire, or any of them, may examine the parties and their witnesses on oath, and may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult.
17. The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State and together with the costs of the arbitration and award shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court, . . . and the taxing officer shall on the written application of either of the parties, ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under the principal Act. The amount, if any, payable by the occupier of the factory or workshop may in the event of non-payment be recovered in the same manner as fines under the principal Act.

SECOND SCHEDULE.

Section 39.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
41 & 42 Vict. c. 16.	The Factory and Workshop Act, 1878.	<p>In section three, the words "and a workshop" and "or workshop" wherever they occur.</p> <p>In section 5, sub-section (1), the words "near to which any person is liable to pass or to be employed."</p> <p>Sections six, seven, and eight.</p> <p>Section fifteen, from "and" at the end of sub-section (1) to the end of the section.</p> <p>In section twenty-two, sub-section (4).</p> <p>In section thirty-one the words "and is of such a nature as to prevent the person injured by it from returning to his work in the factory or workshop within forty-eight hours after the occurrence of the accident."</p> <p>In section thirty-three the words "and workshop," "or workshop," and "or workshops," wherever they respectively occur.</p> <p>Section sixty-one, from "or" at the end of the paragraph marked (a) to the words "workshop on that system."</p> <p>Section sixty-nine.</p> <p>Section ninety-one, from "(1. The information shall be laid" to "commission of the offence."</p> <p>In section one hundred and one, the words "or workshop."</p>

Appendix.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
46 & 47 Vict. c. 53.	The Factory and Workshop Act, 1883.	Sections seven to twelve and sub-sections (2.) and (3.) of section seventeen.
51 & 52 Vict. c. 22.	The Factory and Workshop Amendment (Scotland) Act, 1888.	The whole Act.
52 & 53 Vict. c. 62.	The Cotton Cloth Factories Act, 1889.	Section twelve.

THE MORTMAIN AND CHARITABLE USES ACT AMENDMENT ACT,
1892.

(55 & 56 VICT. CAP. 11.)(a)

An Act to amend the Mortmain and Charitable Uses Act, 1888. [20th June, 1892.]

* * * * *

I. Section six of the Mortmain and Charitable Uses Act, 1888, except so much of sub-section (2) thereof as provides that an assurance by deed, made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assurator, shall apply to any assurance by deed of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land. (b)

Extension of
51 & 52 Vict.
c. 42, s. 6.

II. For the purpose of this Act "local authority" means any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes or by the issue of any precept, certificate, or other document to require payment from some authority or officer of money which may render necessary the making of any such rate; and "assurance" has the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Definitions.

III. This Act shall not apply to Scotland or Ireland.

Extent of Act.

IV. This Act may be cited as the Mortmain and Charitable Uses Act Amendment Act, 1892.

Short title.

(a) This Act amends 51 & 52 Vict. c. 42, *ante*, p. 1249. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(b) See the section here referred to, *ante*, p. 1251.

Appendix.

THE TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892.

(55 & 56 VICT. CAP. 29.)(a)

An Act to facilitate the Acquisition and Holding of Land by Institutions for Promoting Technical and Industrial Instruction and Training. [27th June, 1892.]

* * * * *

Short title. I. This Act may be cited as the Technical and Industrial Institutions Act, 1892.

Definition of institution. II. This Act applies to every institution established, whether before or after the passing of this Act, for effecting all or any of the following purposes, that is to say,—

- 52 & 53 Vict. c. 76. (i.) To give technical instruction within the meaning of the Technical Instruction Act, 1889.(b)
- (ii.) To provide the training, mental or physical, necessary for the above purpose.
- (iii.) In connexion with the purposes before mentioned, to provide workshops, tools, scientific apparatus and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions and meetings, gymnasiums, and swimming baths, and also general facilities for mental and physical training, recreation, and amusement, and also all necessary and proper accommodation for persons frequenting the institution;

and every such institution is in this Act referred to as the institution.

Governing body. III. (1.) The governing body of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees, or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution.(c)

(2.) The governing body may make bye-laws and rules for the management and conduct of the institution.(d)

Incorporation of 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. IV. The Lands Clauses Consolidation Act, 1845,(e) and the Lands Clauses Consolidation Acts Amendment Act, 1860,(f) (except the provisions of those Acts relating to the purchase and taking of lands otherwise than by agreement and with respect to the entry upon lands by promoters of the undertaking, and with respect to determining the amount of purchase money by valuation of surveyors), are hereby incorporated in this Act.

Power to take land by agreement. V. The governing body of the institution may by agreement enter on, take, and use any land required by them for the purposes of the institution, and such land may be conveyed either to the governing body or to trustees for the governing body.

Conveyance may be by way of sale, exchange, or gift. VI. (1.) A conveyance of land may be made to the governing body of the institution or to trustees for the governing body either for valuable consideration in money, or in consideration of a rentcharge, or by way of exchange for other land, or, subject as in this Act provided, by way of free gift, and without any consideration.

(2.) A conveyance under this Act by a person having an equitable estate shall operate to pass any bare outstanding legal estate vested in a trustee.

(a) As to the omission of the clause of enactment, see note (a), *ante*, p. 1315.

(b) See this Act, *ante*, p. 1269.

(c) Any sanitary authority may be a governing body within the meaning of this definition.

(d) Such bye-laws and rules if made by virtue of this Act will not require confirmation by any central authority.

(e) *Ante*, p. 808.

(f) *Ante*, p. 931.

VII. (1.) A conveyance under this Act by a person not entitled to dispose absolutely for his own benefit of the land proposed to be conveyed (other than a conveyance on a sale or exchange for the best consideration in money, or by way of rentcharge, or in land to be reasonably obtained) shall be subject to the following restrictions and provisions :—

Appendix.

Conveyances
by limited
owners.

(a.) It shall not in itself, or in addition to any land conveyed under this Act by the same person, comprise more than two acres in the whole in any one county, city, or borough :

(b.) It shall be made either with the consent of the person, if any, entitled to the next estate of freehold in remainder for the time being, or with the approval of the High Court of Justice.

(2.) Every application to the court for an order approving a conveyance under this Act shall be by summons in chambers, and shall, subject to the Acts regulating the court, be assigned to the Chancery Division.

(3.) On any such application the court may direct notice to be served on such persons, if any, as it thinks fit.

(4.) On any such application the court shall have regard to the circumstances of the settled estate, the wants of the neighbourhood, and the interests of the persons entitled in remainder, and the court, if it thinks fit under all the circumstances of the case, may make an order approving the proposed conveyance. Such order, if the court thinks fit, may be made on such terms and conditions, if any, as the court thinks proper ; but no such order shall be made if the application is opposed by any person entitled in remainder, unless the court is of opinion that the opposition is unreasonable, or the interest of the person opposing so remote that it may properly be disregarded.

VIII. Every institution for which land has been acquired under an exercise of the powers conferred by this Act shall be open generally either to all persons or to all persons within specified limits as to age, qualification, or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees, or otherwise, but so that no preference be given to any person or class of persons within the specified limits.

Institution to
be public.

IX. (1.) Land acquired under the powers of this Act shall not be used otherwise than for the purposes of an institution within the meaning of this Act, but, with the consent of the Charity Commissioners, may be sold or may be exchanged for other land.

Site may be
sold or ex-
changed.

(2.) The governing body or their trustees may execute conveyances and do all acts necessary to effectuate a sale or exchange.

(3.) On a sale, the receipt of the governing body or of the trustees for the governing body shall be a sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of other land.

(4.) Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.

(5.) Money arising by sale may, until reinvested in the purchase of land, be invested in the names of the governing body or of trustees for the governing body in any manner in which trust money is for the time being by law authorized to be invested ; and all dividends and income on investments so made and all the resulting income shall be invested in like manner, so as to accumulate in the way of compound interest, and be added to capital until the capital is reinvested in the purchase of land.

X. (1.) Parts I. and II. of the Mortmain and Charitable Uses Act, 1888.(g) and so much of the Mortmain and Charitable Uses Act, 1891.(h) as requires that land assured by will shall be sold within one year from the death of the testator, shall

Parts I. and II.
of 51 & 52 Vict.
c. 42, and part
of 54 & 55 Vict.
c. 73, not to
apply.

(g) *Ante*, p. 1249.

(h) *Ante*, p. 1305.

Appendix. — not apply to conveyances or to assurances by will made under or for the purposes of this Act, but every such conveyance or assurance shall be enrolled as soon as may be in the books of the Charity Commissioners.

(2.) Any corporate body may acquire and shall be entitled to hold and retain land for the purposes of this Act without any license in mortmain.

Extent of Act. XI. This Act shall not extend to Scotland.

THE ALKALI, &c., WORKS REGULATION ACT, 1892.

(55 & 56 VICT. CAP. 30.)(a)

An Act to amend the Alkali, &c., Works Regulation Act, 1881. [27th June, 1892.]

* * * * *

Addition to
scheduled
works.
44 & 45 Vict.
c. 37.

I. The works specified in the schedule hereto shall be added to those specified in the schedule(b) to the Alkali, &c., Works Regulation Act, 1881, and shall be scheduled works for the purposes of that Act.

Provided that if the process used in any work specified in Part I. of the schedule hereto shall be such that no sulphuretted hydrogen is evolved therein, the work shall not be deemed to be included in the schedule.

Exemption of
certain works.

II. Works in which salt is produced by refining rock salt, other than those where the rock-salt is dissolved at the place of deposit, shall not be within the provisions of the Alkali, &c., Works Regulation Act, 1881, in regard to works in which the extraction of salt from brine is carried on, or of any order made or to be made under section ten of that Act.(c)

Commencement
of Act.

III. This Act shall come into operation on the first day of April in the year one thousand eight hundred and ninety-three but certificates of registration(d) may be applied for and issued at any time after the first day of January in that year.

Short title.

IV. This Act may be cited as the Alkali, &c., Works Regulation Act, 1892.

SCHEDULE.

PART I.

1. Alkali waste works, that is to say, works for the recovery of sulphur from alkali waste or for utilizing the sulphur or any other constituent of such waste.

2. Barium works, that is to say, works for the manufacture of barium compounds from barium sulphide.

3. Strontium works, that is to say, works for the manufacture of strontium compounds from strontium sulphide.

4. Antimony sulphide works, that is to say, works for the manufacture of anti-mony sulphide.

5. Bisulphide of carbon works, that is to say, works for the manufacture of bisulphide of carbon.

(a) This Act amends the 44 & 45 Vict. c. 37, *ante*, p. 1115. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(b) See this schedule, *ante*, p. 1124.

(c) See this section, *ante*, p. 1117.

(d) Certificates of registration under section 11 of the principal Act, *ante*, p. 1117, may be granted after the 1st January, 1893, but must be obtained on or before the 1st April, 1893.

PART II.

Appendix.

6. Venetian red works, that is to say, works for the manufacture of Venetian red, crocus, or polishing powder, by heating sulphate or some other salt of iron.
7. Lead deposit works, that is to say, works where the sulphate of lead deposit from sulphuric acid chambers is smelted.
8. Arsenic works, that is to say, works for the preparation of arsenious acid, or where nitric acid or a nitrate is used in the manufacture of arsenic acid or an arseniate.
9. Nitrate and chloride of iron works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of nitrate or chloride of iron.
10. Muriatic acid works, that is to say, works, not being alkali works as defined in the Alkali, &c., Works Regulation Act, 1881, where muriatic acid is made.
11. Fibre separation works, that is to say, works where muriatic acid gas is used for the separation of silk or woollen fibre from vegetable fibre.
12. Tar works, that is to say, works where gas tar is distilled or is heated in any manufacturing process.
13. Zinc works, or works in which zinc is extracted from the ore.

THE FORGED TRANSFERS ACT, 1892.

(55 & 56 VICT. CAP. 36.)(e)

An Act to remove doubts as to the meaning of the Forged Transfers Act, 1891.

[27th June, 1892.]

* * * * *

I. This Act may be cited as the Forged Transfers Act, 1892, and this Act and the Forged Transfers Act, 1891, may be cited together as the Forged Transfers Acts, 1891 and 1892.

Short title.
54 & 55 Vict.
c. 43.

II. Whereas by sub-section one of section one of the Forged Transfers Act, 1891, (f) it is provided that such company or local authority as therein mentioned "shall have power to make compensation by a cash payment out of their funds for any loss arising from the transfer of any such shares, stock, or securities in pursuance of a forged transfer, or of a transfer under a forged power of attorney," and it is expedient to remove doubts as to the application of the Act to losses and forgeries before the passing of the Act: Be it therefore enacted as follows:—

Removal of
doubt as to the
operation of
54 & 55 Vict.
c. 43.

The Forged Transfers Act, 1891, shall have effect as if at the end of sub-section one of section one of that Act there were added the words "whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid."

III. Sub-section two of section one of the said Act (g) shall be read as if, after the words "on any one hundred pounds transferred," were inserted the words "with a minimum charge equal to that for twenty-five pounds."

Amendment of
54 & 55 Vict.
c. 43, s. 1 (2).

IV. Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued.

Provision where
one company
takes over
shares, &c.,
of another
company.

(e) This Act amends 54 & 55 Vict. c. 43, *ante*, p. 1299. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(f) See this section, *ante*, p. 1299.

(g) *Ante*, p. 1299.

Appendix.

THE RAILWAY AND CANAL TRAFFIC ACT, 1892.

(55 & 56 VICT. CAP. 44.)(a)

An Act to amend the Railway and Canal Traffic Act, 1888. [27th June, 1892.]51 & 52 Vict.
c. 25.

WHEREAS by section twenty-four of the Railway and Canal Traffic Act, 1888, it is provided that after the commencement of the session of Parliament next after that in which the report of the Board of Trade with respect to a classification of traffic and schedule of rates and charges has been submitted to Parliament, the Board of Trade may embody in a provisional order such classification and schedule as in the opinion of the Board of Trade ought to be adopted, and procure a Bill to be introduced to confirm the order, and it is expedient to amend this provision :

* * * * *

Time for appli-
cation for pro-
visional order.

I. A provisional order in pursuance of sub-section seven of section twenty-four of the Railway and Canal Traffic Act, 1888, may be made, and a Bill to confirm the same may be introduced, at any time after hearing the parties as provided in sub-section four of the said section.

Short title.

II. This Act may be cited as the Railway and Canal Traffic Act, 1892.

THE PUBLIC LIBRARIES ACT, 1892.

(55 & 56 VICT. CAP. 53.)(b)

An Act to consolidate and amend the Law relating to Public Libraries.
[27th June, 1892.]

* * * * *

*Adoption of Act and Constitution of Library Authority.*Extent and
application of
Act.

I. (1.) This Act shall extend to every library district for which it is adopted.

(2.) For the purposes of this Act and subject to the provisions thereof every urban district(c) and every parish in England and Wales which is not within an urban district shall be a library district.(d)

* * * * *

Limitations on
expenditure for
purposes of Act.

II. (1.) A rate or addition to a rate shall not be levied for the purposes of this Act for any one financial year(e) in any library district to an amount exceeding one penny in the pound.(f)

(a) This Act amends 51 & 52 Vict. c. 25, s. 24, sub-sect. (7). See the note to that section, *ante*, p. 1239, where the effect of the amendment is stated. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

(b) This Act repeals and consolidates all the previous Acts relating to public libraries, a list of which will be found in the Schedule. As to the omission of the clause of enactment, see preceding note. This Act has been amended by 56 & 57 Vict. c. 11, *post*.

(c) See the definition of an urban district in section 27, *post*.

(d) The next sub-section is repealed by section 89 of the Local Government Act, 1894 (56 & 57 Vict. c. 73). See section 7 of that Act.

(e) This means the period of 12 months for which the accounts of the authority are made up. See section 27, *post*.

(f) That is upon the rateable value of property actually capable of producing and yielding this amount. See *Ex parte Brown, In re The Corporation of Liverpool*, 31 L. J. M. C. 108; 6 L. T. (N.S.) 241; 8 Jur. (N.S.) 642; 26 J. P. 389. See section 18 (1), *post*.

Appendix.

Proceedings for
adoption of Act.

(2.) This Act may be adopted for any library district(*g*) subject to a condition that the maximum rate or addition to a rate to be levied for the purposes of this Act in the district or in any defined portion of the district in any one financial year shall not exceed one halfpenny or shall not exceed three farthings in the pound, but such limitation if fixed at one halfpenny may be subsequently raised to three farthings, or altogether removed, or where it is for the time being fixed at three farthings may be removed.

III. With respect to(*h*)—

- (a) The adoption of this Act for any library district; and
- (b) The fixing, raising, and removing of any limitation on the maximum rate to be levied for the purposes of this Act; and
- (c) The ascertaining of the opinion of the voters(*i*) with respect to any matter for which their consent is required under this Act;

the following provisions shall have effect; (that is to say,)

- (1.) Any ten or more voters(*i*) in the library district may address a requisition in writing to the authority hereafter in this section mentioned(*k*) requiring that authority to ascertain the opinion of the voters in the district with respect to the question or questions stated in the requisition: Provided that where the library district is a municipal borough the requisition may be made by the council of the borough:
- (2.) On receipt of the requisition the said authority(*k*) shall proceed to ascertain by means of voting papers(*l*) the opinion of the voters with respect to the said question or questions; but the said authority shall not ascertain the opinion of the voters on any question with respect to the limitation of the rate unless required to do so by the requisition, or with respect to any limitation of the rate other than the limitations specified in this Act:
- (3.) The procedure for ascertaining the opinion of the voters(*l*) shall be in accordance with the regulations contained in the First Schedule to this Act; and those regulations shall have effect as if they were enacted in the body of this Act:
- (4.) Every question so submitted to the voters shall be decided by the majority of answers to that question recorded on the valid voting papers, and where the majority of those answers are in favour of the adoption of this Act the same shall forthwith, on the result of the poll being made public, be deemed to be adopted:
- (5.) Where the opinion of the voters in any library district is ascertained upon the question as to the adoption of this Act, or upon a question as to the limitation of the rate, no further proceeding shall be taken for ascertaining the opinion of the voters until the expiration of one year at least from the day when the opinion of the voters was last ascertained, that is to say, the day on which the voting papers were collected:
- (6.) The authority to ascertain the opinion of the voters for the purposes of this section shall be in a municipal borough the mayor, and in any other urban district the chairman of the urban authority, and in a parish the overseers.^(m)

(*g*) See section 1 and 56 & 57 Vict. c. 11, ss. 2 and 3, *post*.

(*h*) This section is expressly repealed, so far as it relates to an urban district, by 56 & 57 Vict. c. 11, s. 2 (2), *post*, and is superseded, as regards rural parishes, by section 7 of the Local Government Act, 1894. It remains in force, therefore, only in the metropolis, as applied by ss. 21—23, *post*.

(*i*) The voters are the burgesses or county electors, *i.e.* in a rural parish the parochial electors. See section 27, *post*.

(*k*) See sub-section (6).

(*l*) In a rural parish the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by the Local Government Act, 1894 (56 & 57 Vict. c. 73). See section 7 (2) of that Act.

(*m*) In every rural parish the parish meeting now have, exclusively, the power of adopting this Act. See section 7 (1) of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

Appendix.

Act, when adopted, to be executed by library authority.

Constitution of commissioners for executing Act in parish.

Rotation of commissioners.

Meetings of commissioners.

Proceedings of commissioners to be recorded.

Power to vestries of neighbouring

IV. This Act when adopted for any library district shall be carried into execution, if the library district is an urban district, by the urban authority, and if it is a parish, by the commissioners appointed under this Act^(a); and any such authority or commissioners executing this Act are hereinafter referred to as a "library authority."

V. (1.) Where this Act is adopted for any parish the vestry shall forthwith appoint not less than three nor more than nine voters in the parish to be commissioners for carrying this Act into execution.^(b)

(2.) The commissioners shall be a body corporate by the name of "The Commissioners for Public Libraries and Museums for the parish of _____, in the county of _____," and shall have perpetual succession and a common seal, with power to acquire and hold lands for the purposes of this Act, without any license in mortmain.^(c)

VI. (1.) The commissioners shall, as soon as conveniently may be after their appointment, divide themselves by agreement, or in default of agreement by ballot, into three classes, one-third or as nearly as may be one-third of them being in each class.

(2.) The offices of the first class shall be vacated at the expiration of one year, the offices of the second class at the expiration of two years, and the offices of the third class at the expiration of three years from the time of their appointment.

(3.) The offices of vacating commissioners shall be filled by an equal number of new commissioners to be appointed by the vestry from among the voters in the parish; and every newly elected commissioner shall hold his office for the term of three years from the date when the office became vacant, and no longer, unless re-elected; but a person on ceasing to be a commissioner, shall, unless disqualified, be re-eligible.

(4.) Any casual vacancy among the commissioners, whether arising by death, resignation, incapacity, or otherwise, shall as soon as may be after the occurrence thereof be filled up by the vestry; but the term of office of a commissioner appointed to fill up a casual vacancy shall expire at the date at which the term of office of the commissioner in whose place he is appointed would have expired.^(d)

VII. The commissioners shall meet at least once in every month, and at such other times as they think fit, at some convenient place; and any one commissioner may summon a special meeting by giving three clear days' notice in writing to each commissioner, specifying therein the purpose for which the meeting is called. Business shall not be transacted at any meeting of the commissioners unless at least two of them are present.

VIII. All orders and proceedings of the commissioners shall be entered in books kept for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any judicial proceeding.

IX. (1.) Where this Act is adopted for any two or more neighbouring parishes, the vestries of those parishes may by agreement^(e) combine for any period in carry-

(a) If there is a parish council for the parish, the authority for the execution of the Act will now be that council. 56 & 57 Vict. c. 73, s. 7 (5), (7); see also sect. 53. If there is no parish council, it will, apparently, be a committee of the parish meeting. *Ibid.*, s. 19 (3).

(b) This sub-section is now practically obsolete.

(c) The parish council will be a body corporate, with power to hold lands for the purposes of this Act without a license in mortmain. 56 & 57 Vict. c. 73, s. 3 (9). As to parishes without a parish council, see *ibid.*, s. 19 (7).

(d) This section is now practically obsolete.

(e) The vestries were not corporate bodies, and the only evidence of an agreement between them would be the resolutions appearing on the minutes, but parish councils are corporate bodies and can enter into formal agreements.

ing this Act into execution, and the expenses of carrying this Act into execution shall be defrayed by the parishes in such proportions as may be agreed on by the vestries.

(2.) The vestry of each of the said parishes shall appoint not more than six commissioners in accordance with the provisions of this Act, and the commissioners so appointed for the several parishes shall form one body of commissioners, and shall act accordingly in the execution of this Act.^(g)

X. Where the voters in a parish adjoining or near any library district for which either this Act has been adopted, or the adoption thereof is contemplated, consent to such parish being annexed to the said district, such parish, subject to the consent of the library authority of the said district being so given, shall be annexed to and form part of that district for the purposes of this Act; the vestry of such parish shall appoint not more than six commissioners in accordance with the provisions of this Act, and the commissioners so from time to time appointed shall during their respective terms of office be deemed for all the purposes of this Act to be members of the library authority of the said district.

Appendix.

parishes to combine.^(f)

Power to annex parish to adjoining district.

Execution of Act.

XI. (1.) The library authority^(h) of any library district⁽ⁱ⁾ for which this Act has been adopted may, subject to the provisions of this Act, provide all or any of the following institutions, namely, public libraries, public museums, schools for science, art galleries, and schools for art, and for that purpose may purchase and hire land, and erect, take down, rebuild, alter, repair, and extend buildings, and fit up, furnish, and supply the same with all requisite furniture, fittings, and conveniences.^(k)

Provision of libraries, museums, and schools of science and art.

(2.) Where any of the institutions mentioned in this section has been established either before or after the passing of this Act by any library authority under this Act or the Acts hereby repealed, that authority may establish in connexion therewith any other of the said institutions without further proceedings being taken with respect to the adoption of this Act.

(3.) No charge shall be made for admission to a library or museum provided under this Act for any library district, or in the case of a lending library, for the use thereof by the inhabitants of the district; but the library authority, if they think fit, may grant the use of a lending library to persons not being inhabitants of the district, either gratuitously or for payment.

XII. (1.) For the purpose of the purchase of land under this Act by a library authority the Lands Clauses Acts^(l) with the exception of the provisions relating to the purchase of land otherwise than by agreement, shall be incorporated with this Act.

Provision as to acquisition and disposal of land.

(2.) The library authority of any library district which is an urban district may with the sanction of the Local Government Board appropriate for the purposes of this Act any land which is vested in that authority.^(m)

(3.) A library authority may with the sanction of the Local Government Board sell any land vested in them for the purposes of this Act, or exchange any such land for other land better adapted for those purposes, and the money arising from the

^(f) As to the combination of urban districts, see 56 & 57 Vict. c. 11, s. 4, *post*.

^(g) See now 56 & 57 Vict. c. 73, s. 53 (2), as to the compulsory transfer of the powers and duties of any commissioners appointed under this sub-section.

^(h) See section 4, *ante*.

⁽ⁱ⁾ See section 1, *ante*.

^(k) A free library, established by a library authority under this Act, is not a building the property of any literary or scientific institution within rule vi. of 5 & 6 Vict. c. 35, and is therefore not exempt from assessment to income tax under Schedule A. *Andrews v. Bristol Corporation*, 61 L. J. Q. B. 715; 67 L. T. 618; 56 J. P. 615; 5 R. 7; *Manchester (Mayor, &c. of) v. Macadam* [1895], 1 Q. B. 673; 72 L. T. (N.S.) 349; 43 W. R. 438; 59 J. P. 261; 11 T. L. R. 284.

^(l) 8 & 9 Vict. c. 18, *ante*, p. 808; 23 & 24 Vict. c. 106, *ante*, p. 931; 46 & 47 Vict. c. 15, *ante*, p. 1174.

^(m) And see *Attorney General v. Corporation of Sunderland*, *ante*, p. 227.

Appendix.

sale or received by way of equality of exchange, shall be applied in or towards the purchase of other land better adapted for the said purposes or may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board.

(4.) A library authority may let a house or building, or any part thereof, or any land vested in them for the purposes of the Act, which is not at the time of such letting required for those purposes, and shall apply the rents and profits thereof for the purposes of this Act.

Power to grant charity land for purposes of this Act.

XIII. (1.) Any person holding land for ecclesiastical, parochial, or charitable purposes may, subject as hereinafter provided, grant, or convey, by way of gift, sale, or exchange, for any of the purposes of this Act, any quantity of such land, not exceeding in any one case one acre, in any manner vested in such person.

(2.) Provided that—

(a.) Ecclesiastical property shall not be granted or conveyed for those purposes without the consent of the Ecclesiastical Commissioners; and

(b.) Parochial property shall not be so granted or conveyed save by the board of guardians of the poor law union comprising the parish to which the property belongs, or without the consent of the Local Government Board; and

(c.) Other charitable property shall not be so granted or conveyed without the consent of the Charity Commissioners; and

(d.) The land taken in exchange or the money received for such sale shall be held on the same trusts as the land exchanged or sold; and

(e.) Land situated in the administrative county of London, or in any urban district containing according to the last published census for the time being over twenty thousand inhabitants, which is held on trusts to be preserved as an open space, or on trusts which prohibit building thereon, shall not be granted or conveyed for the purposes of this Act.

(3.) Any land granted or conveyed to any library authority under this section may be held by that authority without any license in mortmain.

Vesting of property in library authority.

XIV. All land appropriated, purchased, or rented, and all other real and personal property presented to or purchased or acquired for any library, museum, art gallery, or school under this Act shall be vested in the library authority.

Management of libraries, &c., by library authority or committee.

XV. (1.) The general management, regulation, and control of every library, museum, art gallery, and school provided under this Act shall be vested in and exercised by the library authority, and that authority may provide therein books, newspapers, maps, and specimens of art and science, and cause the same to be bound and repaired when necessary.

(2.) The library authority may also appoint salaried officers and servants, and dismiss them, and make regulations for the safety and use of every library, museum, gallery, and school under their control, and for the admission of the public thereto.

(3.) Provided that a library authority being an urban authority may if they think fit appoint a committee and delegate to it all or any of their powers and duties under this section, and the said committee shall to the extent of such delegation be deemed to be the library authority. Persons appointed to be members of the committee need not be members of the urban authority. (a)

Power to library authorities to make agreements for use of library.

XVI. (1.) The commissioners separately appointed for any two or more parishes for which this Act has been adopted may with the consent of the voters in each of those parishes agree to share in such proportions and for such period as may be determined by the agreement the cost of the purchase, erection, repair, and maintenance of any library building situate in one of those parishes, and also the cost of the purchase of books and newspapers for such library, and all other expenses connected with the same.

(2.) The library authority of any library district may with the consent of the

(a) No qualification is prescribed for these persons.

voters(b) in the district and of the Charity Commissioners make the like agreement with the governing body of any library established or maintained out of funds subject to the jurisdiction of the Charity Commissioners, and situate in or near the library district, and, in case of inability, objection, or failure on the part of the governing body to enter into such agreement, the Charity Commissioners may, if they think fit, become party to the agreement on behalf of the governing body.

Appendix.

(3.) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery, or school for art in like manner as to a library.

XVII. Where a library authority accepts a grant out of money provided by Parliament from the Department of Science and Art towards the purchase of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of a teacher in any such school, or towards the furnishing of any such school, that authority may accept the grant upon the conditions prescribed by the Department of Science and Art, and may execute any instruments required by that Department for carrying into effect those conditions, and upon payment of the grant shall be bound by such conditions and instruments, and have power and be bound to fulfil and observe the same.

Power to library authority to accept parliamentary grant.

Financial Provisions.

XVIII. (1.) The expenses incurred in a library district in and incidental to the execution of this Act, including all expenses in connection with ascertaining the opinion of the voters in the district, may be defrayed,—

Expenses of library authority, how defrayed.

- (a.) Where the library district is a municipal borough, out of the borough fund or borough rate, or a separate rate to be made, assessed, and levied in like manner as the borough rate; and
 - (b.) Where the library district is an urban district other than a borough, out of the rate applicable to the general expenses incurred in the execution of the Public Health Acts,(c) or a separate rate to be made, assessed, and levied in like manner as the rate so applicable; and
 - (c.) Where the library district is a parish, out of a rate to be raised with and as part of the poor rate, subject, however, to this qualification, that every person assessed to the poor rate in the said parish in respect of lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be entitled to an allowance of two thirds of the sum assessed upon him in respect of those lands for the purposes of this Act.(d)
- (2.) Where the library district is a parish, and is not combined with any other parish for the execution of this Act, then—
- (i.) Such amount only shall be raised out of a rate for the purposes of this Act as is from time to time sanctioned by the vestry of the parish;(e) and

(b) In an urban district the consent of the urban authority is substituted by 56 & 57 Vict. c. 11, s. 2, *post*.

(c) This will be either the general district rate or the improvement rate. See the Public Health Act, 1875, s. 207, *ante*, p. 276.

(d) Where by mistake a similar abatement was allowed for a period of three years on lands not used as arable, &c., it was held that the amounts of such abatements were recoverable as arrears under 17 Geo. 2, c. 38, ss. 7 and 11; *Reg. v. Blenkinsop* [1892], 1 Q. B. 43; 61 L. J. M. C. 45; 66 L. T. (N.S.) 187; 40 W. R. 272; 56 J. P. 246; see also the note to section 2, sub-section (1), *ante*. The incidence of charge of this rate is not altered by the Local Government Act, 1894. See section 7 (6) of that Act. But the proportion of the poor rate levied for the purposes of this Act must be stated in the demand note. *Ibid.* s. 11 (5).

(e) The consent of the parish meeting is now substituted for the sanction of the vestry by 56 & 57 Vict. c. 73, s. 7 (3). It seems that though the maximum rate may have been fixed under section 2, the parish meeting may sanction a sum less than the maximum. But no provision seems to be made for the case where the sum sanctioned by the parish meeting is insufficient for the payment of expenses.

Appendix.

- (ii.) The vestry to be called for the purpose of sanctioning the amount shall be convened in the manner usual in the parish; ^(a) and
- (iii.) The amount for the time being proposed to be raised for the purposes of this Act shall be expressed in the notice convening the vestry, and (if sanctioned) shall be paid according to the order of the vestry to such person as may be appointed by the library authority to receive it; and
- (iv.) In the notices requiring the payment of the rate there shall be stated the proportion which the amount to be thereby raised for the purposes of this Act bears to the total amount of the rate.

(3.) Where a parish or part of a parish is annexed in pursuance of this Act to any library district, so much of the said expenses as is chargeable to such parish or part shall be defrayed in like manner as if such parish or part were a separate library district, but the sanction of the vestry shall not be required for raising the sums from time to time due from the parish for meeting those expenses.

XIX. (1.) Every library authority, with the sanction of the Local Government Board, and in the case of a library authority being commissioners appointed for a parish, with the sanction also of the vestry ^(b) of such parish, may borrow money for the purposes of this Act on the security of any fund or rate applicable for those purposes.

(2.) Sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875, ^(c) relating to borrowing by a local authority shall apply, with the necessary modifications, to all money borrowed by any library authority for the purposes of this Act, as if the library authority were an urban authority, and as if references to this Act were substituted in those sections and in the forms therein mentioned for references to the Public Health Act, 1875.

(3.) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875, ^(d) lend any money which may be borrowed by a library authority for the purposes of this Act.

XX. (1.) Separate accounts shall be kept of the receipts and expenditure under this Act of every library authority and their officers, and those accounts shall be audited in like manner and with the like incidents and consequences, in the case of a library authority being an urban authority, and of their officers, as the accounts of the receipts and expenditure of that authority and their officers under the Public Health Acts. ^(e)

(2.) The accounts of the receipts and expenditure of a library authority being commissioners appointed under this Act, and of their officers, shall be audited yearly by a district auditor in like manner and with the like incidents and consequences as in the case of an audit under the Acts relating to the relief of the poor, and those commissioners shall be a local authority within the meaning of the District Auditors Act, 1879. ^(f)

(3.) The accounts of the receipts and expenditure under this Act of any library authority other than the council of a municipal borough shall be open at all

^(a) This provision is now practically obsolete. The parish meeting for giving sanction to the rate may be convened as prescribed by 56 & 57 Vict. c. 73, ss. 45 (3), 51, and Schedule I., Part I., rule 2.

^(b) See note ^(e), *ante*, p. 1325, as to substituting the consent of the parish meeting. By section 12 (1) (b) of the Local Government Act, 1894, a parish council may borrow for the purposes of this Act, but, by sub-section (3) of the same section, not otherwise than in accordance with that Act, and the charge for such purpose shall ultimately be on the rate applicable to the purposes of this Act.

^(c) See these sections, *ante*, pp. 314, 319.

^(d) See this Act, *ante*, p. 1028.

^(e) See the Public Health Act, 1875, ss. 246, 247, *ante*, p. 325.

^(f) The form of financial statement to be submitted to the district auditor by the commissioners was prescribed by order of the Local Government Board, dated November 26, 1892. (St. R. & O. p. 243.) See the District Auditors Act, 1879, *ante*, p. 1101.

reasonable times to the inspection, free of charge, of any ratepayer in the library district, and any such ratepayer may without charge make copies of and extracts from those accounts; and if any library authority or any person being a member thereof or employed by them and having the custody of the accounts fails to allow the accounts to be inspected, or copies or extracts to be made, as required by this section, such authority or person shall, for each offence be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding five pounds.

Appendix.

Provisions affecting London only.

XXI. (1.) The city of London shall be a library district, and on this Act being adopted for the city, the common council shall be the library authority.

Application of
Act to city of
London.

(2.) The opinion of the voters in the city of London with respect to any question under this Act shall be ascertained by the mayor on the requisition of the common council.

(3.) The expenses incurred in the city of London in and incidental to the execution of this Act, including all expenses in connexion with ascertaining the opinion of the voters, shall be defrayed out of the consolidated rate levied by the commissioners of sewers, or a separate rate to be made, assessed, and levied by those commissioners in like manner as the consolidated rate.

(4.) So much of this Act as limits the rate or addition to a rate to be levied in any library district for any one financial year to one penny in the pound shall not extend to the city of London.

XXII. Every district mentioned in Schedule B. to the Metropolis Management Act, 1855, as amended by any subsequent Acts, shall be a library district, and the provisions of this Act shall apply accordingly with the following modifications:—

Power for
district in
London to
adopt Act.
18 & 19 Vict.
c. 120.

(1.) The opinion of the voters in any such district with respect to any question under this Act shall be ascertained by the district board on the requisition in writing of any ten or more of such voters:

(2.) The library authority for such district shall be commissioners appointed by the district board, and the provisions of this Act relating to commissioners appointed for a parish shall apply with the substitution of "district" for "parish" and of "district board" for "vestry":

(3.) The expenses incurred in any such district in and incidental to the execution of this Act, including all expenses in connexion with ascertaining the opinion of the voters, shall to such amount as is sanctioned by the district board be defrayed by that board in like manner as if they had been incurred for the general purposes of the Metropolis Management Act, 1855, and the sums from time to time required for defraying those expenses, to the extent so sanctioned, shall be paid by the district board to any person appointed by the commissioners to receive the same; but nothing in this enactment shall enable a district board to levy for the purposes of this Act any greater sum in any financial year than the amount produced by a rate of one penny in the pound, or any less rate specially fixed for the purpose of this Act in the district:

(4.) The enactments authorising two or more neighbouring parishes to combine in carrying this Act into execution shall have effect as if any such district were included in the term "parish" and the district board of such district in the term "vestry."

(5.) Where a parish in any such district has adopted the Acts hereby repealed, or any of them, or hereafter adopts this Act, it shall be treated in all respects for the purposes of this Act as if it were outside the district, and, in particular,—

(a.) A person shall not, by reason of being a voter in the parish, be accounted for the purposes of this section as a voter in the district; and

(b.) A representative of the parish on the district board shall not take part in any proceeding of the board under this section; and

Appendix.

- (c.) The parish shall not be called on to contribute to the payment of any expenses incurred in pursuance of this section ; and
- (d.) Any question of accounts arising between the parish and the other parishes in the district, or between the parish and the district, in consequence of this section, shall be decided finally by the Local Government Board ;
- (6.) After the adoption of this Act for any such district, proceedings shall not, except with the sanction of the Local Government Board, be taken for the separate adoption thereof for any parish in the district.

Power to vestry or district board in London to appropriate land for library, &c.

XXIII. The vestry or district board constituted under the Metropolis Management Act, 1855, for any parish mentioned in Schedule A. or district mentioned in Schedule B. to that Act, as amended by any subsequent Acts, may, if this Act is in force in such parish or district, appropriate with the sanction of the Local Government Board for the purposes of this Act any land which is vested in such vestry or board.

Supplemental Provisions.

Adjustment of interests on termination of agreement.

XXIV. Any agreement under this Act between two or more vestries or library authorities, or between a library authority and any other body, may provide that on the termination of the agreement an adjustment shall be made of the interests of the several parties thereto in any property to the provision of which they have contributed, and as to the mode in which the adjustment shall be arrived at, and in the event of any dispute the adjustment shall on the application of any of the parties be made by an arbitrator appointed by the Local Government Board.

Saving for Oxford.

XXV. Nothing in this Act shall interfere with the operation of the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in Oxford.

Constitution and proceedings of vestry for purposes of Act.

XXVI. For the purposes of this Act the vestry of a parish shall be any body of persons acting by virtue of any Act of Parliament as or instead of a vestry, and, where there is no such body, shall be the inhabitants of the parish in vestry assembled, but in the latter case the persons registered as county electors in respect of the occupation of property situate in the parish, and no other persons, shall be members of the vestry.

Definitions.

XXVII. In this Act, unless the context otherwise requires,—

The expression “urban district” means a municipal borough, Improvement Act district, or local government district; and “urban authority” means, as regards each such district, the council, improvement commissioners, or local board :

The expression “financial year” means the period of twelve months for which the accounts of a library authority are made up :

The expression “voter” means a person who is registered as a county elector or enrolled as a burgess in respect of the occupation of property situate in the district or parish in connection with which the voter is mentioned :

The expression “overseer” includes any persons authorised and required to make and levy poor rates in a parish, and acting instead of overseers :

The expression “common council” means in relation to the city of London the mayor, commonalty, and citizens, acting by the mayor, aldermen, and commons in common council assembled.

Repeal.

XXVIII. (1.) The Acts mentioned in the Second Schedule to this Act shall be repealed as from the commencement of this Act, save so far as any of them extend beyond England and Wales ; and where those Acts have been adopted for any library district, that adoption shall be deemed to have been an adoption of this Act, and this Act shall apply accordingly.

(2.) For the purpose of this section the said Acts shall be deemed to have been adopted for any district in which they were in force immediately before the commencement of this Act.

XXIX. Nothing in this Act shall be deemed to limit, or to reduce or alter the limit of any rate which any library authority is authorised to levy under or by virtue of any local Act. Appendix.
—
Saving as to
local Acts.

XXX. This Act shall come into operation on the first day of October next after the passing thereof. Commencement.

XXXI. This Act may be cited as the Public Libraries Act, 1892.

Short title.

SCHEDULES.

FIRST SCHEDULE.(a)

Section 3.

REGULATIONS for ascertaining the opinion of the voters in a library district.

In these regulations the expression “presiding officer” means, in relation to any library district, the authority required under this Act to ascertain the opinion of the voters in that district on any question, or a person appointed by that authority, and that authority is referred to in these regulations as the “district authority.”

PART I.—PROCEDURE BY VOTING PAPERS.

1. The district authority shall, before the day appointed for the issuing of the voting papers, provide the presiding officer with a copy of the burgess roll or county register, as the case may be, or of the part or parts thereof containing the names of all the voters in the library district.

2. On the day appointed for issuing the voting papers the presiding officer shall send by post or cause to be delivered to every voter at his address appearing in the roll or register a voting paper in the form contained in Part II. of this Schedule or to the like effect.

3. Every voting paper shall bear the number of the voter on the roll or register, as the case may be, and shall contain directions to the voter, in accordance with these regulations, as to the day on which and the hours within which the voting paper is to be collected or sent, and as to the place at which, if sent, it will be received.

4. The district authority shall, before the issue of the voting papers, appoint such a number of competent persons as may be necessary to collect and receive the voting papers and to assist in the scrutiny thereof on such terms and for such remuneration as may be reasonable, and shall also appoint a convenient place within the district at which the voting papers are to be received, but the district authority shall not be required to collect any voting papers which have been sent by them to addresses beyond the limits of the district.

5. Voting papers shall be collected between 8 A.M. and 8 P.M. of the third day after that on which they were issued.(b) Such day is hereinafter in these regulations referred to as the polling day, and such last-mentioned hour is hereinafter referred to as the “conclusion of the poll.”

(a) This schedule, so far as it applies to rural parishes, is repealed by 56 & 57 Vict. c. 73, s. 89. And though it is not expressly repealed in so far as it applies to urban parishes, it is now practically obsolete, for 56 & 57 Vict. c. 11, s. 2, *post*, substitutes the consent of the urban authority for the consent of the voters.

(b) If the papers are issued on the 1st, they must be collected on the 4th day of the month.

Appendix.

6. A voting paper shall not after collection be delivered up to any person except the presiding officer or a person appointed to receive voting papers.

7. The persons appointed to collect the voting papers shall, either before or as soon as may be after the conclusion of the poll, deliver the voting papers collected by them to the presiding officer or to a person appointed to receive the same.

8. A voting paper may be sent by prepaid post or by hand to the presiding officer at the place appointed by the district authority for the receipt thereof, so that it be received by the presiding officer at such appointed place before the conclusion of the poll. Voting papers, except those collected by persons appointed by the district authority, shall not be received at the appointed place after the conclusion of the poll.

9. Every person appointed to collect voting papers shall be appointed in writing by the district authority, and shall carry such writing with him while employed in the collection, and shall show it to any voter who may require him to do so. If any person so appointed fails to comply with this regulation, or if any unauthorised person fraudulently receives or induces any voter to part with a voting paper, such person shall be guilty of a misdemeanor, and liable, on conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding twenty pounds, or to both imprisonment and fine.

10. A voting paper which contains the answer "yes" or "no" to any question put to the voters and is duly signed shall be deemed to be a valid voting paper with respect to that question.

A voting paper shall be deemed to be duly signed if signed by the voter with his full name or ordinary signature.(a)

11. Where any voter is unable to write he may cause his voting paper to be filled up by another person. In such case he shall attach his mark to the voting paper, and such mark shall be attested by such other person, who shall sign his name and append his address thereto. A voting paper to which such mark is attached, and which is duly attested, shall be deemed to be duly signed.

12. Any person fabricating a voting paper, or presenting or returning a fabricated voting paper, knowing that the same does not bear the true answer or signature of the voter to whom it was sent or intended to be sent, shall be guilty of personation,(b) and liable to the penalties of that offence, as provided by the Ballot Act, 1872.

13. The presiding officer shall, as soon as may be after the conclusion of the poll, proceed to a scrutiny of the voting papers, and shall compare the same with his copy of the roll or register, and ascertain how far the voting papers have been duly signed by the voters.

14. A question put to the voters shall be deemed to be answered and determined in the affirmative or negative, according as the majority of valid voting papers returned contain the answer "yes" or "no" to that question.

15. Immediately on the conclusion of the scrutiny the presiding officer shall report to the district authority the number of voters who have voted "yes" and "no" respectively to each question put to them, and the number of voting papers which are invalid.

16. The presiding officer shall seal up in separate packets the valid and the invalid voting papers respectively, and shall transmit them, together with his report, to the district authority.

17. Upon receiving the report of the presiding officer the district authority shall cause the result of the poll to be made public in such manner as they think fit.

(a) Therefore the paper will be sufficiently signed if the ordinary signature has initials only of the Christian names.

(b) Personation is a misdemeanor punishable by imprisonment with or without hard labour.

PART II.—FORM OF VOTING PAPER.

Appendix.

Public Libraries Act, 1892.

Borough (Parish or other library district) of

No. (Here insert number of voter in burgess roll or county register, as the case may be.)

Question 1... ..	Are you in favour of the adoption of the Public Libraries Act, 1892, for the borough (or parish, &c.) of	Answer 1. (<i>To be filled in "Yes" or "No."</i>)*
Question 2... ..	Are you in favour of the rate being limited to one halfpenny in the pound? (<i>Or to three farthings, or of the existing limitation of the rate under the Public Libraries Act, 1892, being removed, or of the existing limitation to one halfpenny being raised to three farthings, as the case may require.</i>)	Answer 2. (<i>To be filled in "Yes" or "No."</i>)†
Question 3... ..	Are you in favour of an agreement being made with (<i>here designate the body or bodies, according to section ten or section sixteen of this Act</i>) for the purpose of (<i>briefly state objects of proposed agreement</i>).	Answer 3. (<i>To be filled in "Yes" or "No."</i>)‡

Signature of Voter.

* To be omitted if Libraries Act already adopted.

† To be omitted if no question stated in the requisition as to limitation of rate.

‡ To be omitted if no such question raised.

1. This voting paper will be collected by an authorised collector between the hours of 8 A.M. and 8 P.M. on day, the 18 , (*insert polling day*), or may be sent by prepaid post or by hand, addressed to (*state name or designation of presiding officer, and place appointed by the district authority*). If it is sent it must be received at that address before 8 P.M. on the above-mentioned day.

2. You may require the collector to show his authority in writing. No authority is valid unless it is (signed by *A.B.*, or sealed, or *as the district authority may direct*).

SECOND SCHEDULE.

Section 28.

ACTS REPEALED.

Session and Chapter.	Short Title.
18 & 19 Vict. c. 70 ...	The Public Libraries Act, 1855.
29 & 30 Vict. c. 114 ...	The Public Libraries Amendment Act (England and Scotland), 1866.
34 & 35 Vict. c. 71 ...	The Public Libraries Act, 1855, Amendment Act, 1871.
47 & 48 Vict. c. 37 ...	The Public Libraries Act, 1884.
50 & 51 Vict. c. 22 ...	The Public Libraries Acts Amendment Act, 1887.
52 & 53 Vict. c. 9 ...	The Public Libraries Acts Amendment Act, 1889.
53 & 54 Vict. c. 68 ...	The Public Libraries Acts Amendment Act, 1890.

Appendix.

THE PUBLIC WORKS LOANS ACT, 1892.

(55 & 56 VICT. CAP. 61.)(a)

An Act to grant Money for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [28th June, 1892.]

50 & 51 Vict.
c. 16.
Reduction of
minimum rate
of interest on
loans.
38 & 39 Vict.
c. 89.
42 & 43 Vict.
c. 77.

II. Section ten of the Public Works Loans Act, 1875,(b) and section two of the Public Works Loans Act, 1879,(c) (which sections fix the minimum rate of interest on loans), shall, in their application to loans granted after the passing of this Act, have effect as if four per cent. were therein substituted for five per cent.

IX. This Act may be cited as the Public Works Loans Act, 1892.

Short title.

THE SHOP HOURS ACT, 1892.

(55 & 56 VICT. CAP. 62.)(d)

An Act to amend the law relating to the Employment of Young Persons in Shops. [28th June, 1892.]

WHEREAS the health of many young persons employed in shops and warehouses is seriously injured by reason of the length of the period of employment :

Short title.

I. This Act may be cited as the Shop Hours Act, 1892.

Commencement of Act.

II. This Act shall come into operation on the 1st day of September, one thousand eight hundred and ninety-two.

Hours of employment in shops.

III. (1.) No young person(e) shall be employed in or about a shop(e) for a longer period than seventy-four hours, including meal times, in any one week.

(2.) No young person shall, to the knowledge of his employer, be employed in or about a shop, having been previously on the same day employed in any factory or workshop, as defined by the Factory and Workshop Act, 1878, for the number of hours permitted by the said Act, or for a longer period than will, together with the time during which he has been so previously employed, complete such number of hours.

41 & 42 Vict.
c. 16.

Notice of hours to be given.

IV. In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop.(f)

(a) This Act amends 38 & 39 Vict. c. 89, *ante*, p. 1028, and 42 & 43 Vict. c. 77, *ante*, p. 1109. As to the omission of the clause of enactment, see sect. 4 of the Statute Law Revision Act, 1894, 57 & 58 Vict. c. 56.

(b) *Ante*, p. 1030.

(c) *Ante*, p. 1109.

(d) This Act is amended by 56 & 57 Vict. c. 67, and 58 & 59 Vict. c. 5, *post*. As to the omission of the clause of enactment, see sect. 4 of the Statute Law Revision Act, 1894, 57 & 58 Vict. c. 56.

(e) See the definition in section 9, *post*. A boy employed by a newsagent fetched newspapers to his employer's shop, and delivered them to customers at their addresses, and sold them both inside and outside the shop, and also worked in the shop, sweeping it out, cleaning the windows, and tying up parcels. Held, that he was employed all the time in or about the shop. *Collman v. Roberts*, Q. B. D., 14 Feb. 1896.

(f) An employer who neglects to exhibit in his shop the notice required by this section does not thereby render himself liable to penalties under sect. 5. *Hammond v. Pulsford* [1895], 1 Q. B. 223; 64 L. J. M. C. 63; 71 L. T. (N.S.) 767; 43 W. R. 236; 59 J. P. 533. But a penalty is now imposed by 56 & 57 Vict. c. 67, *post*.

V. Where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding one pound for each person so employed.^(g)

Appendix.

Fine for employing persons contrary to the Act.

VI. Where the employer of any young person is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

Power of occupier to exempt himself from fine on conviction of actual offender.

VII. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1878, and sections eighty-eight, eighty-nine, ninety, and ninety-one of the said Act, and so much of section ninety-two thereof as relates to evidence respecting the age of any person ^(h) . . . shall have effect as if re-enacted in this Act and in terms made applicable thereto.

Summary proceedings.

VIII. The council of any county or borough, and in the city of London the common council, may appoint such inspectors as they may think necessary for the execution of this Act within the areas of their respective jurisdictions, and sections sixty-eight and seventy⁽ⁱ⁾ of the Factory and Workshop Act, 1878, shall apply in the case of any such inspector as if he were appointed under that Act, and as if the expression workshop, as used in those sections, included any shop within the meaning of this Act.^(k)

Appointment of inspectors.

IX. In this Act, unless the context otherwise requires—

Interpretation.

“Shop” means retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire, and includes licensed public houses and refreshment houses of any kind:

“Young person” means a person under the age of eighteen years:

Other words and expressions have the same meanings respectively as in the Factory and Workshop Act, 1878.

41 & 42 Vict. c. 16.

X. Nothing in this Act shall apply to a shop where the only persons employed are members of the same family, dwelling in the building of which the shop forms part, or to which the shop is attached, or to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant.

Exemption of members of the same family, and servants.

^(g) This fine is recoverable summarily. See section 7, *post*.

^(h) These sections were for the most part repealed by the Summary Jurisdiction Act, 1884, before this Act was passed. A question may therefore arise whether the procedure under this Act is regulated by these sections, regarded as unrepealed and incorporated, or by the Summary Jurisdiction Act, 1884. Words are here omitted relating to Scotland and Ireland only.

⁽ⁱ⁾ The form of certificate to be furnished to an inspector on his appointment is prescribed by Order of the Secretary of State, dated April 21, 1893 (St. R. & O. p. 470).

^(k) The remainder of this section relates only to Ireland. As to payment of salaries and expenses out of the county or borough fund, see 56 & 57 Vict. c. 67, *post*.

Appendix.

THE POLICE ACT, 1893.

(56 & 57 VICT. CAP. 10.)

An Act to amend the Police Acts.

[9th June, 1893.]

* * * * *

Borough police
may be employed
as fire brigade.
10 & 11 Vict.
c. 89.

II.—(1.) The council of a borough may by resolution delegate to the watch committee its powers under sections thirty-two and thirty-three of the Town Police Clauses Act, 1847,^(a) or under similar enactments in any local Act; and where such resolution has been passed, the watch committee may employ constables wholly or partially as firemen:

Provided that no constable, who at the passing of this Act is not employed to act as fireman, shall be so employed without his consent.

(2.) The pay of constables exclusively so employed, and the allowances of constables partially so employed, shall be defrayed from the fund or rate which is applicable to the purposes of the fire brigade or fire police.^(b)

(3.) The pensions and gratuities granted to such constables, and the allowances and gratuities granted to their widows and children shall be paid out of the police pension fund^(c); but the council shall pay from the fund or rate applicable to the purposes of the fire brigade or fire police to the police pension fund such contribution as the Secretary of State may, by general or special order, determine to be a fair contribution in respect of such pensions, gratuities, and allowances.

* * * * *

Construction of
Act, and saving.

VII. This Act shall be read as one with the Police Act, 1890, and nothing in this Act shall interfere with or diminish the powers of the Secretary of State under section seventeen of that Act.^(d)

Partial repeal
of 10 & 11 Vict.
c. 89, and
amendment of
local Acts,

VIII. (1.) The words “any mischief by fire and” in section fourteen of the Town Police Clauses Act, 1847,^(e) are hereby repealed, and this Act shall have effect notwithstanding anything in any other Act, local or general, to the contrary.

(2.) Where any local Act or order contains provisions as to a fire brigade or fire police, the Secretary of State may frame and submit to Parliament a provisional order repealing or modifying such provisions so as to bring them into harmony with the provisions of this Act, and he may by such order unite any existing fire brigade pension fund with the police pension fund, and may make any other adjustments which may appear to him to be necessary in order to give effect to this Act.

Short title.

IX. This Act may be cited as the Police Act, 1893; and the Police Acts, 1839 to 1890, and this Act may be cited together as the Police Acts, 1839 to 1893.

(a) See these sections *ante*, p. 914.

(b) The general district fund or rate in urban districts.

(c) Created by the Police Act, 1890 (53 & 54 Vict. c. 45), s. 16.

(d) With regard to the Exchequer Contribution to the police pension fund.

(e) Prescribing the duties of constables appointed thereunder for the prevention of felonies, &c.

Appendix.

THE PUBLIC LIBRARIES (AMENDMENT) ACT, 1893.

(56 & 57 VICT. CAP. 11.)(f)

An Act to amend the Public Libraries Act, 1892.

[9th June, 1893.]

* * * * *

I. This Act may be cited as the Public Libraries (Amendment) Act, 1893, and shall be construed as one with the Public Libraries Act, 1892 (in this Act referred to as the principal Act), and these two Acts may be together cited as the Public Libraries Acts, 1892 and 1893.

Short title.
55 & 56 Vict.
c. 53.

II. (1.) Where a library district is an urban district—

Modification as
to adoption,
&c., in urban
districts.

(i.) The principal Act may, subject to the conditions contained in the second section of that Act, (g) be adopted, and the limitation of the maximum rate to be levied for the purposes of that Act may within the limits fixed by that Act be fixed, raised, or removed, by a resolution of the urban authority under this Act:

(ii.) The consent of the urban authority given by a resolution of that authority under this Act shall be substituted in an urban district for the consent of the voters in any case when the consent of the voters is required under the principal Act.

(2.) Section three of the principal Act (h) is hereby repealed, so far as it relates to an urban district.

III. (1.) A resolution under this Act shall be passed at a meeting of the urban authority, and one month at least before the meeting special notice of the meeting and of the intention to propose the resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

Provision as to
a resolution of
an urban
authority for the
adoption, &c.
of the principal
Act.

(a.) given in the mode in which notices to attend meetings of the authority are usually given; or

(b.) where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last-known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last-known place of abode in England. (i)

(2.) The resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix. (g)

(3.) A copy of the resolution shall be sent to the Local Government Board.

(4.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently

(f) See 55 & 56 Vict. c. 53, *ante*, p. 1320. As to the omission of the clause of enactment, see section 4 of the Statute Law Revision Act, 1894, 57 & 58 Vict. c. 56.

(g) *Ante*, p. 1321.

(h) *Ante*, p. 1321. It will be observed that there is no provision in this Act at all corresponding to sub-section (5) of section 3 of the principal Act, so that the urban authority are not prevented from reconsidering their resolution within the year.

(i) Compare section 3 (3) and (4) of the Public Health Acts Amendment Act, 1890, *ante*, p. 561, and see notes thereto.

Appendix. published, shall be made after three months from the date of the first advertisement.^(a)

Power to two or more library authorities to combine.

IV. (1.) Where the principal Act is adopted for two or more neighbouring urban districts, the library authorities of those districts may by agreement combine^(b) for any period for carrying the Act into execution; and the expense of carrying the Act into execution shall be defrayed by such authorities in such proportions as may be agreed on by them.

(2.) For the purposes of the Act a joint committee may be formed, the members whereof shall be appointed by the several combining authorities in such proportions as may be agreed on, but need not be members of any of the combining authorities. Any such committee shall have such of the powers of a library authority under the principal Act, except the power of borrowing money,^(c) as the combining authorities may agree to confer upon them.

(3.) Where any of the combining authorities are improvement commissioners or a local board the provisions of the principal Act with respect to accounts and audit shall apply to such committee as if they were a local board who were a library authority under the Act.^(d)

THE RIVERS POLLUTION PREVENTION ACT, 1893.

(56 & 57 VICT. CAP. 31.)^(e)

An Act to explain the Rivers Pollution Prevention Act, 1876. [27th July 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Explanation of 39 & 40 Vict. c. 75, s. 3, as to drainage into streams.

I. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

Construction and short title.

II. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876; and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

(a) Compare section 3 (6) of the Public Health Acts Amendment Act, 1890, *ante*, p. 562, and note thereto.

(b) Power to neighbouring parishes to combine was given by 55 & 56 Vict. c. 53, s. 9, *ante*, p. 1322.

(c) See 55 & 56 Vict. c. 53, s. 19, *ante*, p. 1326.

(d) See 55 & 56 Vict. c. 53, s. 20, *ante*, p. 1326.

(e) See 39 & 40 Vict. c. 75, *ante*, p. 1058. This Act appears to provide for a case like that before the Court in *Attorney-General v. Dorking Union (Guardians of)*, *ante*, p. 46, where it was held that proceedings under the Rivers Pollution Prevention Act, 1876, could not be taken against a local authority merely because a sewer vested in them polluted a stream, they themselves not having constructed or interfered with the sewer. And see also *Reg. v. Staines Local Board*, *ante*, p. 47.

THE BARBED WIRE ACT, 1893.

(56 & 57 VICT. CAP. 32.)(f)

An Act to prevent the use of Barbed Wire for Fences in Roads, Streets, Lanes, and other Thoroughfares.(g)

[27th July, 1893.]

* * * * *

I. This Act may be cited for all purposes as the Barbed Wire Act, 1893.

Short title.

II. In this Act—

Interpretation.

The expression “barbed wire” means any wire with spikes or jagged projections; and the expression “nuisance to a highway,” as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway:

In England and Wales the expression “local authority” means any county council, any urban sanitary authority, any sanitary authority in London, any

(f) This Act concerns urban and rural district councils more in their capacity as highway authorities than as sanitary authorities. The subject, however, being novel and of considerable public importance, it has been thought as well to include it in this Appendix. The Act was occasioned by certain cases decided in the English and Scotch Courts, which were as follows:—

A landowner erected upon his own land by the side of a public road in Scotland a fence of barbed wire, and the road trustees brought an action to have it removed on the ground that it was dangerous to persons and cattle lawfully using the road. The fence was placed about three feet from the boundary line between the road and the landowner's property, and stood entirely upon his land. Held, that the action lay, but, upon the defendant undertaking so to alter and protect the fence as to remove the danger, the action was dismissed. *Elgin Road Trustees v. Innes*, 14 Ct. Sess. Cas. (4th Ser.) 48. The occupier of certain land adjoining a public footpath fenced it off from the footpath by barbed wire set back nine feet from the path. Held, that he was liable in damages to a man who tore his clothes on the bars whilst making way for other persons to pass him on the footpath. *Bird v. Frost*, 56 J. P. 164. Plaintiff and defendant were adjoining landowners, and defendant was bound to maintain a boundary fence between their lands for their mutual benefit. Defendant caused a gap in the fence to be made up with barbed wire which was placed three feet within his own boundary. Plaintiff afterwards put a mare into his field and she injured herself on the wire. Held, that the wire was so placed as to be dangerous to cattle lawfully put by the plaintiff into his field, and that defendant was liable in damages for the injury to the mare. *Bennett v. Blackmore*, 26 Law Journal, 228; 90 Law Times, 395. Defendants erected a fence of barbed wire between their railway line and plaintiff's farm. Sheep grazing on plaintiff's farm were injured by coming in contact with the wire. Held, that the defendants were liable for the damage occasioned to the sheep. *M'Quillan v. Crommelin Iron Ore Company*, 26 Ir. L. T. Rep. 15. Lands belonging to plaintiff and defendant, who were adjoining owners, were separated by an old quickset fence. This hedge defendant dug up and replaced by a new one of young quicks, which he protected by a barbed wire fence of a very severe character, set up with plaintiff's acquiescence on plaintiff's land. Plaintiff then turned out a mare to graze on his land, and she was injured. Held, that defendant was liable. *Shipton v. Lucas*, 92 Law Times, 297. Defendant put up a barbed wire fence separating his land from a public footpath, and plaintiff was walking along the footpath when a sudden gust of wind blew his coat against the fence and it was torn. No negligence or want of skill or care in the erection of the fence was imputed to the defendant, but the county court judge held that the fence as constructed and placed was dangerous to the public using the footpath and a nuisance. This decision was affirmed on appeal to the High Court. *Stewart v. Wright*, 57 J. P. 137; affirmed 9 T. L. R. 480.

A valuable collection and review of the American cases on the subject will be found in 95 Law Times, 419.

(g) This title must not be taken to limit the meaning of the term “highway” as used in the Act. A *cul-de-sac* may be a highway. *Bateman v. Bluck*, 18 Q. B. 870; 21 L. J. Q. B. 406; 17 Jur. 386.

Appendix.

highway board, and any other local authorities existing, or that may be hereafter created by Parliament, having control over highways :(a)

* * * * *

Removal of
barbed wire,
where nuisance
to highway.

III. (1.) Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve(b) notice in writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance.

(2.) If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for the local authority to apply to a court of summary jurisdiction,(c) and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order(d) direct the occupier to abate such nuisance; and on his failure to comply with such order within a reasonable time the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connexion therewith.(e)

* * * * *

Proceedings
where local
authority is
occupier of the
land.

IV. Where the local authority are the occupiers of the land, proceedings under this Act may be taken by any ratepayer within the district of the local authority, and a notice to the local authority to abate the nuisance shall be deemed to be properly served if it is served upon the clerk of the local authority, and any ratepayer taking proceedings may do all acts and things which a local authority is empowered to do.

Expenses of
local authority.

V. Any expenses incurred by a local authority in the execution of this Act shall be defrayed in like manner as the expenses of the local authority incurred in respect of any highways.(f)

THE SHOP HOURS ACT, 1893.

(56 & 57 VICT. CAP. 67.)(g)

An Act to amend the Shop Hours Act, 1892. [21st December, 1893.]

* * * * *

Short titles.

I. This Act may be cited as the Shop Hours Act, 1893, and this Act and the Shop Hours Act, 1892, may be cited together as the Shop Hours Acts, 1892 and 1893.

Salaries and
expenses.

II. (1.) Any salaries payable or other expenses incurred by the council of a county or a borough for the purposes of the Shop Hours Act, 1892, shall be defrayed

(a) The remainder of this section only applies to Scotland and Ireland.
Highway boards are now in most cases superseded by rural district councils under section 25 of the Local Government Act, 1894, *ante*, p. 723.
(b) As to service of notices, see section 26 of the Highway Act, 1864 (27 & 28 Vict. c. 101). And upon the whole text compare section 94 of the Public Health Act, 1875, *ante*, p. 115.
(c) As defined by section 13 (11) of the Interpretation Act, 1889, 52 & 53 Vict. c. 63.
(d) Without appeal, except by case stated under section 33 of the Summary Jurisdiction Act, 1879.
(e) The next sub-section relates only to Ireland.
(f) In the case of an urban authority, see section 216 of the Public Health Act, 1875, *ante*, p. 293; and in the case of a rural authority, see section 29 of the Local Government Act, 1894, *ante*, p. 728.
(g) Amending 55 & 56 Vict. c. 62, *ante*, p. 1332. See also 58 & 59 Vict. c. 5, *post*.

by the council of a county out of the county fund, and by the council of a borough out of the borough fund or borough rate.(a)

* * * * *

III. [*Application of Acts of 1892 and 1893 to Scotland.*]

THE ISOLATION HOSPITALS ACT, 1893.

(56 & 57 VICT. CAP. 68.)(b)

An Act for enabling County Councils to promote the establishment of Hospitals for the reception of Patients suffering from Infectious Diseases. [21st December, 1893.]

* * * * *

I. This Act may be cited for all purposes as the Isolation Hospitals Act, 1893. Short title.

II. This Act shall not extend to Scotland or Ireland, or to the administrative county of London, or to any county borough, or without the consent of the council of the borough to any borough containing, according to the census for the time being in force, a population of ten thousand persons or upwards, or to any borough containing a less population without the like consent, unless the Local Government Board by order direct that the Act shall apply to such borough. Limits of Act.

III. The council of every county may, on such application being made to them, and proof adduced, as is in this Act mentioned, provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases (in this Act referred to as "an isolation hospital").(c) County council to provide for establishment of isolation hospitals on application, &c.

IV. (1.) An application to a county council for the establishment of an isolation hospital may be made by any one or more of the authorities, by this Act defined as local authorities,(d) having jurisdiction in the county, or any part of the county; and any such application may be made in pursuance of a resolution passed at a meeting of such authority by a majority of the members assembled thereat, and voting in manner in which votes are required by law to be given at a meeting of the authority. Any such meeting shall be called together by notice given in manner in which notices of the meetings of the authority concerned are required to be given by law, and specifying the object of the meeting to be the making an application to the county council under this Act. Application, by whom to be made.

(a) The salaries referred to are those of the inspectors appointed under 55 & 56 Vict. c. 62, s. 8, *ante*. The expenses are the expenses of proceedings for offences against that Act. Sub-section (2) of this section relates to Ireland only, and is therefore omitted.

(b) By section 131 of the Public Health Act, 1875, *ante*, p. 148, both urban and rural district councils have power to provide hospitals for the use of the inhabitants of their districts. This Act, by section 4, enables them to apply to the county council to provide an isolation hospital for their district for persons suffering from infectious diseases. The district for which such a hospital may be provided by the county council under this Act is to be fixed by the county council subject to the right of objection by the district council under sections 8 and 20 to the exclusion of their district in the hospital area, or to the subsequent variation of that area.

(c) It will be observed that hospitals to be provided under this Act are for infectious cases only. Infectious diseases within the meaning of the Act are defined by section 26, *post*. The observations already made as to the provision of hospitals under section 131 of the Public Health Act, 1875, *ante*, p. 149, being subject to this limitation, that a nuisance must not be thereby created, are equally applicable here.

(d) These are urban and rural district councils and parish councils. See section 26, *post*. They do not, however, include boroughs, save to the extent mentioned in section 2, *ante*.

Appendix.

Application,
how made.

(2.) An application for the establishment of an isolation hospital may also be made by any number of ratepayers not less than twenty-five, in any contributory place as defined by this Act.^(a)

V. (1.) The application shall be made by petition, and shall state the district for which the isolation hospital is required, and the reasons which the petitioners adduce for its establishment.

(2.) The county council shall, by themselves, or by a committee of their body appointed for that purpose, consider the petition, and, if satisfied by the statements of the petition as originally prepared, or by any amendments made therein, that a *prima facie* case is made out for a local inquiry, they shall cause such inquiry to be made as to the necessity for the establishment of an isolation hospital.

Effect of report
of medical officer
of county.

VI. The county council may direct an inquiry to be made by the medical officer of health of the county as to the necessity of an isolation hospital being established for the use of the inhabitants of any particular district in the county, and in the event of such medical officer reporting that such an hospital ought to be established for the use of the inhabitants of a district, may take the same proceedings in all respects for the establishment of such hospital as if a petition had been presented by a local authority for the establishment of an isolation hospital for the district named in the report of such medical officer of health.^(b)

Conduct of
local inquiry.

VII. The county council shall conduct the local inquiry into the necessity for the establishment of an isolation hospital, and as to the proper site for the hospital, and the district for which it is to be established (in this Act called the "hospital district"), by a committee consisting of such number of their members, either with or without the addition of such other persons, or in such other manner as the council think expedient. All expenses properly incurred by any such committee shall be paid as hereinafter directed. The local inquiry shall be held subject to such regulations and otherwise as the council thinks fit. Due notice of the time and place at which any inquiry is to be held by the county council shall be given in such manner as the county council may think the best adapted to inform any persons interested,^(c) and such persons may attend and state their case before the members appointed to conduct such inquiry.

Variation of
district and
appeal.

VIII. (1.) Every hospital district constituted under this Act shall consist of a single local area, or two or more local areas, as defined by this Act.^(d)

(2.) The county council may vary any proposed hospital district by adding to it or subtracting from it any local area.^(e) A local area which is already provided with such isolation hospital accommodation as may in the opinion of the county council be sufficient for the reasonable exigencies of such area, shall not, without the assent of the local authority of such area testified by a resolution of such authority, be included in a hospital district under this Act.

(3.) If any local authority having jurisdiction within any part of the proposed hospital district, object to the formation of such a district, or to the addition or subtraction thereto or therefrom of any local area within their jurisdiction, such authority may at any time within three months from the date of the order appeal to the Local Government Board,^(f) and the decision of such Board shall be conclusive.

(a) For definition of a contributory place, see section 26, *post*.

(b) This section provides an alternative method for putting the county council in motion. The inquiry by the county medical officer of health does not, however, dispense with the local inquiry directed to be held under the preceding section.

(c) These would apparently include the local authorities for the proposed district and the owners of the land proposed to be taken for the site of the hospital, and, probably, also the adjoining owners.

(d) For definition of local area, see section 26, *post*.

(e) Compare section 20, *post*, as to the alteration of an order for the constitution of a hospital district.

(f) As to appeals to the Local Government Board, see section 24, *post*.

IX. On conclusion of a local inquiry by the county council as to the necessity for the establishment of an isolation hospital, the county council shall make an order, ^(g) either dismissing the petition, or constituting a hospital district, ^(h) and directing an isolation hospital for such district to be established: Provided that the county council shall not take steps for the constitution of a hospital district for one or more contributory places forming a portion of a rural sanitary district within the jurisdiction of the county council, or for one local area, unless the sanitary ⁽ⁱ⁾ authority of such place or places, or area, assent to the application, or are proved to the satisfaction of the county council to be unable or unwilling to make suitable hospital accommodation for such place, places, or area.

Appendix.

Order as to dismissal of petition or constitution of district.

X. (1.) When a hospital district has been constituted, a committee shall be formed by the county council. Any such committee may consist wholly of members of the county council, or partly of members of the county council and partly of representatives of the local area or areas in the district, or wholly of such local representatives. The county council shall make regulations for the election, rotation, and qualification, and for all other matters relating to the constitution of any such committee, subject to these qualifications, that where no contribution is made by the county council to the funds of the hospital, ^(k) such committee shall consist, unless the constituent local authorities otherwise desire, wholly of representatives of the local area or local areas of the district, and that if any local authority within the hospital district feels aggrieved by the mode in which any such committee is constituted, it may appeal to the Local Government Board, ^(l) and that Board may modify the constitution of any committee so formed by the county council in such manner as the Board think expedient and just.

Hospital committee.

(2.) A hospital committee shall have all such powers of acquiring land as are hereinafter mentioned, ^(m) also all such other powers of providing a hospital by purchase or otherwise, and managing and maintaining the same when so provided, as the county council may delegate to them: Provided that the county council shall retain to themselves the power of inspecting any such hospital, and of raising money by loan for the purposes of such hospital. ⁽ⁿ⁾

(3.) A hospital committee shall be a body corporate, having a perpetual succession and a common seal, under such name and style as may be conferred on it by the county council. It shall be capable of acquiring land, by devise, gift, purchase or otherwise, without licence in mortmain.

(4.) Where a hospital district is an area wholly or as to the greater part thereof under the jurisdiction of any corporate local authority, ^(o) the county council may, if they think fit, invest such local authority with all the powers of a hospital committee under this Act, and thereupon such authority shall be deemed to be the hospital committee for such district, and shall exercise all the powers of such committee under its original corporate name.

XI. Subject to any directions given by the county council, a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erecting thereon an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purposes of this section the provisions contained in sections one hundred and seventy-five to one hundred and seventy-eight (inclusive), and sections two hundred and ninety-six to two hundred and ninety-eight (inclusive) of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act. ^(p)

Purchase of land for hospital.

38 & 39 Vict. c. 55.

(g) For power to vary the order subsequently, see section 20.

(h) Power to vary the district is given by section 8, *supra*. As to payment of expenses where the hospital district consists of more than one local area, see section 18, *post*.

(i) *Sic, quare* "local authority."

(k) Power to make such contribution is given by section 21, *post*.

(l) As to appeals to the Local Government Board, see section 24, *post*.

(m) See section 11, *post*.

(n) Power to raise money by loan is given by section 22, *post*.

(o) This will include urban and rural district councils and parish councils.

(p) See the sections referred to, *ante*, pp. 244, 390.

Appendix.

XII. A hospital committee may from time to time, make all necessary rules and regulations for the conduct and management of their hospital and the patients therein.

Management of hospital, and regulations.

Ambulances to be provided.

XIII. Every isolation hospital shall be provided with an ambulance or ambulances for the purpose of conveying patients to the hospital, and shall, so far as practicable, be in connexion with the system of telegraphs.(a)

Additional hospital accommodation.

XIV. A hospital committee may, in expectation of or in the event of an outbreak of any infectious disease,(b) provide any accommodation in addition to their existing accommodation, by hiring or otherwise acquiring, any buildings, tents, wooden houses, or other places for the reception of patients. A hospital committee may, in addition to, or instead of, providing a central hospital, establish within their district hospitals in cottages or small buildings, or otherwise as they may think expedient. A hospital committee may also, before they have established a permanent hospital or hospitals, provide for their district such temporary accommodation as is in this section mentioned.

Training of nurses.

XV. Subject to any regulations made by the county council, a hospital committee may make arrangements for the training of nurses for attendance on patients suffering from any infectious disease, either inside or outside the hospital, and may charge for the attendance of such nurses outside the hospital; and the expenses of any such nurses, after deducting any profits derived from their services, shall be establishment expenses of the hospital, within the meaning of this Act.(c)

Charges for patients.

XVI. (1.) There shall be charged with respect to every person admitted into the hospital such sum as the hospital committee may think sufficient to defray the expenses in this Act defined as patients' expenses(d) incurred in respect of such person; and there shall be added thereto, in the case of persons brought from beyond the hospital district, such sum as the committee may think fit, as a contribution to the structural and establishment expenses.

(2.) Persons desirous of being provided with accommodation of an exceptional character may be so provided on their undertaking, to the satisfaction of the committee, to pay for the same a sum fixed by the committee, and also to pay for all other expenses incurred in respect of their maintenance in the hospital, and all expenses so incurred in respect of such a patient are in this Act referred to as "special patients' expenses."

Classification of expenses.

XVII. (1.) The expenses to be incurred in respect of any isolation hospital under this Act shall be classified as structural expenses, establishment expenses, and patients' expenses.

"Structural expenses" shall include the original cost of providing the hospital, including the purchase (if any) of the site, and the furnishing such hospital with the necessary appliances and furniture required for the purpose of receiving patients; also any permanent extension or enlargement of the hospital, or any alteration or repair of the drainage, and any structural repairs; but shall not include ordinary repairs, painting, cleaning, or the renewal or keeping in order of the appliances and furniture, or the supply of new appliances or furniture.

"Establishment expenses" means the cost of keeping the hospital, its appliances and furniture, in a state requisite for the comfort of the patients, also the salaries of the doctors, nurses, servants, and all other expenses for maintaining the hospital in a fit state for the reception of patients.

"Patients' expenses" means the cost of conveying, removing, feeding, providing medicines, disinfecting, and all other things required for patients individually, exclusive of structural and establishment expenses.(e).

(2.) All expenses incurred by a county council in and about the formation of a

(a) As to the power of a local authority to provide ambulances of their own, see section 123 of the Public Health Act, 1875, *ante*, p. 143.

(b) For definition of infectious disease, see section 26, *post*.

(c) See as to establishment expenses, section 17, *post*.

(d) See section 17, *post*.

(e) As to expenses of burial, see section 19 (5), *post*.

hospital district, including the costs of any inquiries, and the expenses of obtaining land and other preliminary expenses, shall be deemed to be structural expenses. **Appendix.**

(3.) In the case of any doubt arising as to what are structural expenses, establishment expenses, or patients' expenses within the meaning of this Act, the decision of the hospital committee shall be conclusive.

XVIII. All expenses incurred by a county council or by a hospital committee under this Act, with the exception of patients' expenses, and special patients' expenses, shall, when a hospital district consists of a single local area, be defrayed out of the local rate of that area.^(f) Where the hospital district consists of more than one local area, all the expenses, save as aforesaid, incurred by the hospital committee shall be paid out of a common fund to which all receipts shall be carried, and to which the local authorities^(g) in the hospital district shall contribute in such proportions as the county council by their order constituting the district^(h) may determine. Payment of expenses.

Section two hundred and eighty-four of the Public Health Act, 1875,⁽ⁱ⁾ shall apply to the sums to be contributed by the local authorities under this section as if the same were sums to be contributed by component districts and the hospital committee were a joint board under that Act. 38 & 39 Vict. c. 55.

XIX. (1.) Patients' expenses,^(k) in respect of any person who at the time of his reception into the hospital, or at any time within fourteen days previously, is or has been in receipt of poor law relief, shall be a debt due to the hospital committee from the guardians of the union from which he is sent, and shall be recoverable from them in a summary manner^(l) or otherwise.^(m) Recovery of patients' expenses.

(2.) Patients' expenses, in respect of a non-pauper patient, shall be a debt due to the hospital committee, and recoverable in a summary manner from the local authority of the local area from which the patient is sent, and shall be paid out of the local rate.⁽ⁿ⁾

(3.) Where a patient has been brought from a place beyond the hospital district, any additional charges made by the hospital committee in respect of such patient shall be recoverable as if they were part of the patients' expenses.

(4.) Special patients' expenses^(o) shall be a debt recoverable in a summary manner from the patient, or from the estate of the patient, in respect of whom the expenses have been incurred.

(5.) The expenses of the burial of any patient dying in the hospital shall be payable in the same manner in which the expenses of his maintenance are payable.

XX. A county council may, on the application of a hospital committee, and with the assent of any local authority concerned in such alteration, alter any order made by them for the establishment of a hospital.^(p) Power of county council to alter order.

XXI. A county council may, where they deem it expedient so to do for the benefit of the county, contribute out of the county rate a capital or annual sum towards the structural and the establishment expenses of an isolation hospital, or to either class of such expenses.^(q) Power of county councils to contribute to hospitals.

^(f) For definitions of local area and local rate, see section 26, *post*. As to contributions out of the county rate, see section 21, *post*.

^(g) Defined in section 26, *post*.

^(h) See section 9, *ante*.

⁽ⁱ⁾ See this section *ante*, p. 381.

^(k) Defined in section 17, *supra*.

^(l) By the civil debt procedure under 42 & 43 Vict. c. 49, ss. 6 and 35.

^(m) *e.g.*, in the county court. This section removes a difficulty which is not provided for in cases under section 132 of the Public Health Act, 1875, *ante*, p. 150.

⁽ⁿ⁾ For definitions of local area, local authority, and local rate, see section 26, *post*. The civil debt procedure will be applicable.

^(o) See section 16 (2), *ante*.

^(p) Power to vary the district is given by section 8 (2), *ante*, p. 1340.

^(q) As to what are structural and establishment expenses, see section 17, *ante*. By section 18 these fall primarily on the local rate.

Appendix.

Power to borrow money.

XXII. A county council may borrow on the security of the county rate, and in manner provided by the Local Government Act, 1888,^(a) any money required for the purpose of carrying into effect the provisions of this Act; and any loans so borrowed, and any other money expended by them for the purposes of this Act, together with interest thereon at the rate of four pounds per centum per annum, shall be repaid to the county council out of the local rate, as in this Act directed; and, in the case of a loan, shall be repaid within a period not exceeding that within which the loan is repayable by the county council.

Treatment in hospital not to disqualify.

XXIII. A person shall not by reason of his being admitted into and maintained in an hospital established in pursuance of this Act suffer any disqualification or any loss of franchise or other right or privilege.^(b)

Inquiries by Local Government Board.

XXIV. Sub-sections one and five of section eighty-seven of the Local Government Act, 1888,^(c) shall apply in every case where the Local Government Board are authorised to determine any question on appeal to them.

Audit of accounts.

XXV. The provisions of sections two hundred and forty-five, two hundred and forty-seven, two hundred and forty-nine, and two hundred and fifty of the Public Health Act, 1875, as amended by the District Auditors Act, 1879, shall apply to the accounts of any hospital committee, and of any officers or assistants of such committee, and to the audit of such accounts, as if such committee were an urban authority other than the council of a borough.^(d)

Definitions.

XXVI. A "local area" means in this Act any one of the following localities, that is to say, an urban sanitary district, a rural sanitary district, or any contributory place, or where a local area is included in more than one county, the part of the area included in each county.

A "contributory place" has the same meaning in this Act as in section two hundred and twenty-nine of the Public Health Act, 1875.^(e)

A "local authority" means in this Act, as respects an urban sanitary district, the urban sanitary authority; as respects a rural sanitary district, the rural sanitary authority, and in the case of any contributory place being a parish, the vestry or other authority in which the powers of the vestry may be vested by any Act of Parliament, and in the case of any other contributory place situated within the district of a rural sanitary authority, such rural sanitary authority.

The "local rate" means, as respects an urban or rural sanitary district or contributory place, the rate out of which expenses incurred in the execution of the Acts relating to public health are directed to be paid, and in the case of any contributory place the expenses incurred in the execution of this Act shall be deemed to be special expenses.^(f)

The expression "infectious diseases" in this Act has the same meaning as in the Infectious Diseases (Notification) Act, 1889,^(g) and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease, by order of the county council, or any committee to whom they have delegated their powers under this section, in like manner as if such council or committee were a local authority acting under that Act.^(h)

(a) See section 69 of that Act.

(b) An extension of the Medical Relief Disqualification Removal Act, 1885, 48 & 49 Vict. c. 46.

(c) See *ante*, p. 525.

(d) See the sections referred to *ante*, pp. 325, 326, 331, 332.

(e) See this section, *ante*, p. 308.

(f) See sections 207 and 229 of the Public Health Act, 1875, *ante*, pp. 276, 308.

(g) See section 6 of that Act, *ante*, p. 541.

(h) See section 7 of that Act, *ante*, p. 542.

38 & 39 Vict.
c. 55.

52 & 53 Vict.
c. 72.

Appendix.

THE PUBLIC WORKS LOANS ACT, 1894.

(57 & 58 VICT. CAP. 11.)(i)

An Act to grant Money for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [18th June, 1894.]

* * * * *

III. In the First Schedule to the Public Works Loans Act, 1875 (specifying the works for the purpose of which the Public Works Loan Commissioners may lend money), the expression "main drainage" shall be construed as including works of underground drainage. Explanation of Schedule to 38 & 39 Vict. c. 89.

* * * * *

V. This Act may be cited as the Public Works Loans Act, 1894.

Short title.

THE MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. CAP. 60.)

An Act to consolidate Enactments relating to Merchant Shipping. [25th August, 1894.]

* * * * *

PART II.

MASTERS AND SEAMEN.

Protection of Seamen from Imposition.

CCXIV.—(1.) A local authority hereinafter mentioned,⁽ⁱ⁾ whose district^(j) includes a seaport, may, with the approval of the Board of Trade, make byelaws relating to seamen's lodging-houses in their district, and those byelaws shall be binding upon all persons keeping houses in which seamen^(m) are lodged and upon the owners thereof and persons employed therein. Seamen's lodging-houses.^(k)

(2.) The byelaws shall amongst other things provide for the licensing, inspection, and sanitary conditions of seamen's lodging-houses, for the publication of the fact of a house being licensed, for the due execution of the byelaws, for preventing the obstruction of persons engaged in securing that execution, for the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and for the exclusion from licensed houses of persons of improper character, and shall impose sufficient fines not exceeding fifty pounds for the breach of any byelaw.⁽ⁿ⁾

(i) This Act amends 38 & 39 Vict. c. 89, Schedule I., *ante*, p. 1043.

(k) This section takes the place of section 48 of the Merchant Shipping (Fishing Boats) Act, 1883 (46 & 47 Vict. c. 41), now repealed by this Act.

(j) See sub-sect. (7), *post*.

(m) Defined by section 742, *post*.

(n) By section 680 (2) of this Act, any offence committed or fine recoverable under a byelaw made in pursuance of this Act may be prosecuted or recovered in the same manner as an offence or fine under this Act. By section 680 (1) (b) an offence under this Act, punishable by a fine not exceeding 100/., shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts. Then section 681 (2) provides that fines are to be recovered as civil debts; section 682 gives an appeal to quarter sessions in case the fine inflicted exceeds five pounds; section 683 limits the time for commencing proceedings to within six months after the commission of the offence; section 684 gives jurisdiction not

- Appendix.
- (3.) The byelaws shall come into force from a date therein named, and shall be published in the *London Gazette*,^(a) and in one newspaper at least circulating in the district, and designated by the Board of Trade.

(4.) If the local authority do not within a time in each case named by the Board of Trade make, revoke, or alter any byelaws under this section, the Board of Trade may do so.^(b)

(5.) Whenever Her Majesty in Council orders^(c) that in any district or any part thereof none but persons duly licensed in pursuance of byelaws under this section shall keep seamen's lodging-houses or let lodgings to seamen from a date therein named, a person acting in contravention of that order shall for each offence be liable to a fine not exceeding one hundred pounds.^(d)

(6.) A local authority may defray all expenses incurred in the execution of this section out of any funds at their disposal as sanitary authority,^(e) and fines recovered for a contravention of this section or of any byelaw under this section shall be paid to such authority and added to those funds.

(7.) In this section the expression "local authority" means in the administrative county of London the county council, and elsewhere in England the local authority under the Public Health Acts,^(f) . . . and the expression "district" means the area under the authority of such local authority.

* * * * *

PART III.

PASSENGER AND EMIGRANT SHIPS.

3. EMIGRANT SHIPS.

Passage Brokers.^(g)

- Passage broker.
- CCCXLI.—(1.) Any person who sells or lets or agrees to sell or let, or is otherwise concerned in the sale or letting of steerage passages^(h) in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea, shall, for the purposes of this Part of this Act, be a passage broker.

(2.) The acts and defaults of any person acting under the authority or as an agent of a passage broker shall, for the purposes of this Act, be deemed to be also the acts and defaults of the passage broker.

only in the place where the offence was actually committed, but also in any place where the offender may happen to be. Sub-sect. (6) of the present section deals with the application of fines recovered.

- (a) See section 740, *post*.

(b) This power has not yet been exercised, nor has there been any exercise of the corresponding power under the repealed statute.

(c) No such Order in Council has yet been made, either under the present Act, or under the corresponding provision in the repealed statute.

Section 738 of this Act gives power to revoke, alter, or add to any Order in Council, when made, and provides for the publication of Orders in Council in the *London Gazette* for laying them before Parliament, and for their taking effect.

(d) As to recovery of such fine, see sections 680 to 684 of the Act, and as to its application, when recovered, see sections 699, 716.

(e) As to these funds, in the case of an urban sanitary authority, see section 207 of the Public Health Act, 1875, *ante*, p. 276. In a rural district it is not clear whether it is intended that the expenses shall be general or special, *i. e.*, chargeable only to the contributory place comprising the town. See section 229 of the same Act, *ante*, p. 308.

(f) That is, presumably, under the Public Health Act, 1875, and amending Acts. See the Short Titles Act, 1892 (55 & 56 Vict. c. 10).

Words relating to Scotland and Ireland only are here omitted.

(g) The sections under this heading take the place of sections 66—69, inclusive, and 81, of the Passengers Act, 1855 (18 & 19 Vict. c. 119), now repealed by this Act.

(h) Defined by section 268.

CCOXLII. (1.) A person shall not act directly or indirectly as a passage broker unless he— **Appendix.**

(a.) Has entered, with two good and sufficient sureties approved by the emigration officer nearest to his place of business, into a joint and several bond⁽ⁱ⁾ to the Crown in the sum of one thousand pounds; and Passage brokers to enter into bond and obtain licence.

(b.) Holds a licence for the time being in force to act as passage broker.

(2.) The bond shall be renewed on each occasion of obtaining a licence, and shall not be liable to stamp duty; it shall be executed in duplicate, and one part shall be deposited at the office of the Board of Trade, and the other part with the said emigration officer.

(3.) The emigration officer may, in lieu of two securities, accept the bond of any guarantee society approved by the Treasury.

(4.) There shall be exempted from this section—

(a.) The Board of Trade, and any person contracting with them or acting under their authority; and

(b.) Any passage broker's agent duly appointed under this Act.^(k)

(5.) If any person fails^(l) to comply with any requirement of this section, he shall for each offence be liable to a fine not exceeding fifty pounds.^(m)

CCOXLIII. (1.) Application for a licence to act as passage broker shall be made to the licensing authority for the place in which the applicant has his place of business. Granting of licences to passage brokers.

(2.) The licensing authority, upon the applicant proving to their satisfaction that he—

(a.) Has entered into and deposited one part of such bond as is required by this Act; and

(b.) Has given to the Board of Trade at least fourteen days' clear notice⁽ⁿ⁾ of his intention to apply for a licence,

may grant the licence,^(o) and shall forthwith send to the Board of Trade notice^(p) of such grant.

(3.) The licensing authority shall be—

(a.) In the administrative county of London the justices of the peace at petty sessions;

(b.) Elsewhere in England the council of a county borough or county district;^(q)

CCOXLIV. (1.) A passage broker's licence shall, unless forfeited, remain in force until the thirty-first day of December in the year in which it is granted, and for thirty-one days afterwards. Forfeiture of licence.

(2.) Any Court,^(r) when convicting a passage broker of an offence under this

(i) The form of bond is prescribed by section 360 and Schedule XIV. *post.*

(k) A passage broker's agent, in order to be duly appointed under this Act, must, under section 345, hold an appointment in writing from the passage broker, in the form required by the Act, and countersigned by the emigration officer at the port nearest to the place of business of the passage broker.

(l) Includes refusal, see section 742, *post.*

(m) This fine cannot be sued for and recovered by the licensing authority, but only by the persons authorized under section 356, *post.*

(n) The form of notice is prescribed by section 360 and Schedule XIV. *post.*

(o) The form of licence is prescribed by section 360 and Schedule XIV. *post.*

(p) The form of notice is prescribed by section 360 and Schedule XIV. *post.*

(q) Under the repealed statutes it was the justices in petty sessions who were the licensing authority, but their powers were transferred to district councils by sections 27 and 32 of the Local Government Act, 1894, *ante*, pp. 727, 730.

The remainder of this section relates to Scotland and Ireland only, and is, therefore, omitted.

(r) Defined by section 742, *post.*

Appendix.

Part of this Act or of any breach or non-performance of the requirements thereof, may order that his licence be forfeited, and the same shall be forfeited accordingly.

(3.) The Court shall forthwith send to the Board of Trade a notice^(a) of any such order.

CCCXLV. [*Passage brokers' agents.*]

CCCXLVI. [*List of agents and runners to be exhibited by brokers and sent to emigration officers.*]

Emigrant Runners.(b)

Emigrant runner.

CCCXLVII. If any person other than a licensed passage broker or his *bonâ fide* salaried clerk, in or within five miles of the outer boundaries of any port,^(c) for hire or reward or the expectation thereof, directly or indirectly conducts, solicits, influences, or recommends any intending emigrant^(d) to or on behalf of any passage broker, or any owner, charterer, or master^(e) of a ship, or any keeper of a lodging-house, tavern, or shop, or any money changer or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or gives or pretends to give to any intending emigrant any information or assistance in any way relating to emigration, that person shall, for the purposes of this Part of this Act, be an emigrant runner.

Emigrant runner's licence.

CCCXLVIII. (1.) The licensing authority^(f) for passage brokers for the place in which a person wishes to act as an emigrant runner and to carry on his business, may, upon his application, and on the recommendation in writing of an emigration officer, or of the chief constable or other head officer of police in such place (but not otherwise), grant, if they think fit, to the applicant a licence^(g) to act as emigrant runner.

(2.) The emigrant runner shall, within forty-eight hours after his licence is granted, lodge the same with the nearest emigration officer, and that officer shall—

(a.) Register the name and abode of the emigrant runner in a book to be kept for the purpose, and number each name in arithmetical order; and

(b.) Upon receipt of a fee, not exceeding seven shillings, supply to the emigrant runner a badge of such form and description as the Board of Trade approve;

but, in case of a renewed licence, the officer need only note the renewal and its date in his registry book against the original entry of the emigrant runner's name.

(3.) An emigrant runner's licence shall remain in force until the thirty-first day of December in the year in which it is granted, unless sooner revoked by any justice for any offence against this Act, or for any other misconduct committed by the holder of such licence, or unless forfeited under the provisions hereinafter contained.^(h)

(4.) When an emigrant runner changes his abode, the emigration officer shall register the change in his registry book.

CCCXLIX. [*Renewal of badge.*]

Penalty on persons acting without licence or badge, using

CCCL. (1.) A person shall not—

(a.) Act as an emigrant runner without being duly licensed and registered; or

(a) The form of notice is prescribed by section 360 and Schedule XIV. *post.*

(b) The sections under this heading take the place of sections 75—79, inclusive, and 80, of the Passengers Act, 1855 (18 & 19 Vict. c. 119), now repealed by this Act.

(c) Defined by section 742, *post.*

(d) This word is not defined by the Act, and so probably would include any person proposing to take a steerage passage on board an emigrant ship as defined by section 268.

(e) Defined in section 742, *post.*

(f) See section 343, *ante.*

(g) The form of licence is prescribed by section 360 and Schedule XIV. *post.*

(h) In section 351. These provisions, however, do not concern the licensing authority.

(b.) Retain or use any emigrant runner's badge not issued to him in manner by this Act required; or **Appendix.**

(c.) Counterfeit or forge any emigrant runner's badge; or

(d.) Employ as an emigrant runner any person not duly licensed and registered.

(2.) If any person acts in contravention of this section, he shall for each offence be liable to a fine not exceeding five pounds.⁽ⁱ⁾

badge not law-
fully issued, or
employing
unlicensed
person.

CCCLI. [*Penalties on emigrant runners for certain acts of misconduct.*]

CCCLII. [*Emigrant runner's commission and fees.*]

* * * * *

Legal Proceedings.(k)

CCCLVI. All fines and forfeitures under the provisions of this Part of the Act (other than the provisions relating to passenger steamers only) shall be sued for by the following officers; that is to say, **Recovery of fines.**

(a.) Any emigration officer.

(b.) Any chief officer of customs; and also

(c.) In the British Islands, any person authorized by the Board of Trade, and any officer of customs authorized by the Commissioners of Customs.

* * * * *

Supplemental.

CCCLX. (1.) The forms set out in the Fourteenth Schedule to this Act, or forms as near thereto as circumstances admit, shall be used in all cases to which such forms are applicable. **Forms.**

* * * * *

Application of Part III. as regards Emigrant Ships.(l)

CCCLXIV. The provisions of this Part of this Act respecting emigrant ships shall apply to all voyages from the British Islands to any port out of Europe, and not within the Mediterranean Sea. **Application to certain voyages.**

CCCLXV. (1.) This Part of this Act, so far as the same is applicable, shall apply to every ship carrying steerage passengers on a colonial voyage as defined by this Part of this Act, provided that the enactments thereof relating to— **Limited application of Part III. of Act to colonial voyages.**

* * * * *

(d.) Passage brokers;

(e.) Emigrant runners.

* * * * *

shall not apply.

* * * * *

(i) This fine cannot be sued for and recovered by the licensing authority, but only by the persons authorized under section 356, *infra*.

(k) The following section takes the place of section 84 of the Passengers Act, 1855 (18 & 19 Vict. c. 119), now repealed by this Act, and is here inserted merely for the purpose of showing that the licensing authority cannot take proceedings for the recovery of fines.

(l) The following sections are here inserted for the purpose of explaining the limits of application of the foregoing sections as to passage brokers and emigrant runners.

(m) By section 270, for the purposes of this Part of this Act, a colonial voyage means a voyage from any port in British possession, other than British India and Hong Kong, to any port whatever, where the distance between such ports exceeds 400 miles, or the duration of the voyage, as determined under this Part of this Act, exceeds three days.

Appendix.

PART XIV.

SUPPLEMENTAL.

Transmission and Publication of Documents.

* * * * *

Publication in
London Gazette.

DCCXLI. Where a document is required by this Act to be published in the *London Gazette*,^(a) it shall be sufficient if notice thereof is published in accordance with the Rules Publication Act, 1893.^(b)

* * * * *

Definitions and Provisions as to Application of Act.

Definitions.

DCCXLII. In this Act, unless the context otherwise requires, the following expressions^(c) have the meanings hereby assigned to them, that is to say—

* * * * *

“Master” includes every person (except a pilot) having command or charge of any ship;

“Seaman” includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship;

* * * * *

“Court” in relation to any proceeding includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates;

* * * * *

“Port” includes place;

* * * * *

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

Repeal and Savings.

Repeal.

DCCXLIV. (1.) The Acts mentioned in the Twenty-second Schedule to this Act^(d) are hereby repealed to the extent specified in the third column of that Schedule.

Provided that—

(a.) Any Order in Council, licence, certificate, bye-law, rule or regulation made or granted under any enactment hereby repealed shall continue in force as if it had been made or granted under this Act;

* * * * *

(c.) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment of this Act;

* * * * *

(2.) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

* * * * *

52 & 53 Vict.
c. 63.

(a) See section 214 (3), *ante*, as to publication of bye-laws.

(b) By section 3 (3) of this Act (56 & 57 Vict. c. 66), where any statutory rules are required by any Act to be published or notified in the *London Gazette* a notice in the Gazette of the rules having been made, and of the place where copies of them can be purchased, shall be sufficient compliance with the said requirement.

(c) Only those expressions are here included which occur in the foregoing sections.

(d) Only those Acts are stated in the schedule, as hereinafter set out, which affected the matters now dealt with by the sections hereinbefore set out.

DCCXLVI.

Appendix.

(2.) Any local Act which repeals or affects any provisions of the Acts repealed by this Act shall have the same effect on the corresponding provisions of this Act as it had on the said provisions repealed by this Act.

* * * * *

Short Title and Commencement.

DCCXLVII. This Act may be cited as the Merchant Shipping Act, 1894.

Short title.

DCCXLVIII. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-five.

SCHEDULES.

FOURTEENTH SCHEDULE.

FORMS UNDER PART III. (PASSENGER AND EMIGRANT SHIPS).

FORM IV.

Form of Passage Broker's Bond.

[s. 342.]

KNOW all men by these presents, that we, *A. B.* [*Insert names and surnames in full, with occupation and address of each of the parties*], of *C. D.*, of, &c., and *E. F.*, of, &c., are held and firmly bound unto our Sovereign, by the grace of God of the United Kingdom of Great Britain and Ireland, defender of the faith, in the sum of one thousand pounds of good and lawful money of Great Britain, to be paid to our said Sovereign, Her (His) heirs and successors; to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, and our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this *day of*, one thousand eight hundred and

Whereas by Part III. of the Merchant Shipping Act, 1894, it is amongst other things enacted, that a person shall not, save as therein excepted, directly or indirectly act as a passage broker in respect of steerage passages from the British Islands to any port out of Europe, and not within the Mediterranean Sea, unless such person has entered, with two good and sufficient sureties, to be approved by the emigration officer nearest to his place of business, into a joint and several bond to the Crown, in the sum of one thousand pounds: And whereas the said *C. D.* and *E. F.* have been duly approved by the proper emigration officer as sureties for the said *A. B.*:

Now the condition of this obligation is such, that if the above bounden *A. B.* and every agent whom he may employ in his business of a passage broker, shall well and truly observe and comply with all the requirements of the said Act, so far as the same relate to passage brokers, and further shall well and truly pay all fines and forfeitures, and also all sums of money, by way of subsistence money, or of return of passage money or compensation, to any steerage passenger, or on his account, together with all costs which the above bounden *A. B.*, or any of his agents as aforesaid, may at any time be adjudged to pay under or by virtue of the said Act, then and in such case this obligation to be void, otherwise to remain in full force.

Signed, sealed, and delivered by the above bounden *A. B.*, *C. D.*, and *E. F.*, in the presence of [*Insert the names and addresses in full of the witnesses*].

N.B.—This bond is to be executed in duplicate in the presence of and to be attested by an emigration officer or his assistant, or an officer of customs, or a magistrate, or a notary public. One part is to be deposited with the Board of Trade, and the other part with the emigration officer at the port nearest to the place of business of the broker.

Each member of a firm or partnership who acts as a passage broker must give a separate bond with two sureties.

The bond is exempt from stamp duty, but must be renewed annually with the licence.



Appendix.

FORM V.

[s. 343.]

Form of Passage Broker's Licence.

A. B. [the names and surnames in full, with the address and trade or occupation of the party applying for the licence, must be correctly inserted. If a member of a firm, the names and surnames of all the members must be given], of _____ in the _____, having shown to the satisfaction of the council of _____ [or me (or us), the undersigned], that he hath given bond to the Crown, as required by the Merchant Shipping Act, 1894, and also given fourteen days' previous notice to the Board of Trade of his intention to apply for a licence to carry on the business of a passage broker in respect of steerage passages from the British Islands to any port out of Europe, and not within the Mediterranean Sea, the said council [or I (or we) the undersigned] having had no sufficient cause shown, and seeing no valid reason why the said A. B. should not receive such licence, do hereby license and authorise the said A. B. to carry on the business of a passage broker as aforesaid until the end of the present year, and thirty-one days afterwards, unless this licence shall be sooner determined by forfeiture for misconduct on the part of the said A. B. as provided in the Merchant Shipping Act, 1894.

Given under the common seal of the said council [or my hand and seal (or our respective hands and seals)] this _____ day of _____, 18____, at _____.

(L.S.)	(Signature authenticating seal.)
(Or Signature)	{ Sheriff, or sheriff substitute, or justices of the peace, as the case may be.

NOTE.—Each member of a firm or partnership who acts as a passage broker must have a separate licence.

FORM VI.

[s. 343.]

Form of Notice to be given to the Board of Trade by Licensing Authority granting a Licence.

Gentlemen,—

This is to give you notice, that the council of _____ [or we (or I), the undersigned] did on the _____ day of _____, 18____, licence A. B., of [insert the names and surnames in full, with the address and occupation of the party], to carry on the business of a passage broker under the provisions of the Merchant Shipping Act, 1894.

(Signatures)	{ Clerk of the said council, or sheriff, or justices of the peace, or as the case may be.
	Place _____
	Date _____

To the Board of Trade, London.

FORM VII.

[s. 343.]

Form of Notice to be given to the Board of Trade by an Applicant for a Passage Broker's Licence.

Gentlemen,—

I, A. B. [the names and surnames in full, with the address and trade or occupation of the party applying for a licence, must be here correctly inserted], of _____, in _____, do hereby give you notice that it is my intention to apply, after the expiration of fourteen clear days from the date of putting this notice into the post, to the council for the city, or borough, or district of _____, or if in Scotland, to the sheriff or sheriff substitute of _____, or if in Ireland, to the justices assembled in petty sessions to be held [the place or district in which the party giving notice has his place of business, as the case may be], for a licence to carry on the business of a passage broker under the Merchant Shipping Act, 1894.

*Signature, _____
Date, _____.*

To the Board of Trade, London.

FORM X.

Appendix.

Form of Emigrant Runner's Annual Licence.

[s. 348.]

A. B., [the names and surname in full, with the address of the party applying for the licence must be here correctly inserted], of _____, in the _____, having made application in writing to the council of _____ [or me, the sheriff, or us, the under-justices of the peace assembled in petty sessions, for the _____ of _____] to grant him a licence to enable him to be registered as an emigrant runner in and for [district, town, or place in which the emigrant runner is to carry on his business], and the said (*A. B.*) having also been recommended as a proper person to receive such licence by an emigration officer, or by the chief constable [or other head officer of police, as the case may be] of _____ [the district, town, or place in which the said *A. B.* is to carry on his business], the said council [or I, the sheriff, or we, the under-mentioned justices], having no sufficient cause shown, and seeing no valid reason why the said *A. B.* should not receive such licence, do hereby grant to him this licence for the purposes aforesaid, subject, nevertheless, to be revoked for misconduct on the part of the said *A. B.*, as provided in the Merchant Shipping Act, 1894.

(Signatures and authenticating seal.)

TWENTY-SECOND SCHEDULE.

[s. 745.]

REPEAL.

Session and Chapter.	Short Title.	Extent of Repeal.
18 & 19 Vict. c. 119	- The Passengers Act, 1855.	The whole Act.
46 & 47 Vict. c. 41	- The Merchant Shipping (Fishing Boats) Act, 1883.	The whole Act.

SHOP HOURS ACT, 1895.

(58 & 59 VICT. CAP. 5) (a).

An Act to amend the Shop Hours Act, 1892.

[9th April, 1895.]

* * * * *

I. If any employer fails to keep exhibited the notice required by section four of the Shop Hours Act, 1892, (b) in manner required by that section, he shall be liable to a fine not exceeding forty shillings.

Penalty on failure to comply with 55 & 56 Vict. c. 62, s. 4.

II. This Act may be cited as the Shop Hours Act, 1895, and shall be construed as part of the Shop Hours Act, 1892, and the Shop Hours Acts, 1892 and 1893, and this Act may be cited collectively as the Shop Hours Acts, 1892 to 1895.

Short title and construction.

(a) See 55 & 56 Vict. c. 62, and 56 & 57 Vict. c. 67, *ante*, pp. 1333, 1338. This Act was passed to amend the defect disclosed by the case of *Hammond v. Pulsford*, *ante*, p. 1333.

(b) See this section, *ante*, p. 1333.

Appendix.

LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895.

(58 & 59 VICT. CAP. 11).(a)

An Act to amend the Law relating to the Taxation of Costs under the Lands Clauses Acts. [14th May, 1895.]

* * * * *

Fees for taxing costs in compensation inquiries and arbitrations.
8 & 9 Vict. c. 18.

I. (1.) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court,^(b) and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.^(c)

(2.) Section forty-five of the Regulation of Railways Act, 1868,^(d) and section one of the Lands Clauses Consolidation Act, 1869,^(e) are hereby repealed.

II. This Act may be cited as the Lands Clauses (Taxation of Costs) Act, 1895.

31 & 32 Vict. c. 119.
32 & 33 Vict. c. 18.
Short title.

THE FACTORY AND WORKSHOP ACT, 1895.

(58 & 59 VICT. c. 37).(f)

An Act to amend and extend the Law relating to Factories and Workshops.

[6th July, 1895.]

* * * * *

GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

Sanitary Provisions and Safety.

I. (1.) A factory shall for the purpose of section three of the principal Act,^(g) and a workshop shall for the purpose of the law relating to public health,^(h) be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein

(a) See 8 & 9 Vict. c. 18, *ante*, p. 808, and the Acts and enactments referred to in note (a) on that page.

(b) See 8 & 9 Vict. c. 18, s. 52, *ante*, p. 818, which is thus extended to costs of arbitration. The decision of the master cannot be reviewed. *In re Sandbach Charity Trustees and North Staffordshire Railway Company*, 3 Q. B. D. 1; 47 L. J. Q. B. 10; 37 L. T. (N.S.) 391; 26 W. R. 229.

(c) See section 26 of the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), and Treasury Order, dated 4th July, 1884, made thereunder as to fees to be taken by stamps.

(d) This enactment related to the fees payable to the Masters for determining questions of disputed compensation under the provisions of the Lands Clauses Consolidation Act, 1845, or of any Act incorporating, altering, or amending the same.

(e) This enactment corresponding to the first part of sub-sect. (1) so far as it relates to the taxation of costs of arbitration.

(f) This Act is here set out only in so far as it concerns sanitary authorities and their officers. See 41 & 42 Vict. c. 16, *ante*, p. 1080; 46 & 47 Vict. c. 53, *ante*, p. 1175; 54 & 55 Vict. c. 75, *ante*, p. 1306.

(g) *Ante*, p. 1080.

(h) See the Public Health Act, 1875, s. 91, *ante*, p. 108, and s. 101 of 41 & 42 Vict. c. 16, *ante*, p. 1088.

Overcrowding of factory or workshop.

bears to the number of persons employed at once in the room a proportion less than two hundred and fifty, or, during any period of overtime, four hundred, cubic feet of space to every person.⁽ⁱ⁾

Appendix.

(2.) Provided that the Secretary of State may, by order made in accordance with section sixty-five of the principal Act,^(k) modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3.) Section seventy-eight of the principal Act^(l) shall be read as if there were included among the notices required by that section to be affixed a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

II. (1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the place from being used for the purpose of that process or handicraft, until such works have been executed as are in the opinion of the court necessary to remove the danger.

(2.) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any sanitary authority under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings in pursuance of section one or section two of the Act of 1891.^(l)

(3.) If there is any contravention of an order under this section the occupier of the place shall be liable to a fine not exceeding forty shillings a day during such contravention.

III. (1.) Where notice of an act, neglect, or default is given by an inspector under section four of the principal Act to a sanitary authority it shall be the duty of the sanitary authority to inform the inspector of the proceedings taken in consequence of the notice.^(m)

(2.) In section two of the Act of 1891, for the words "within a reasonable time" shall be substituted the words "within one month."⁽ⁿ⁾

* * * * *

V. (1.) If an inspector gives notice in writing to the occupier of a factory or workshop, or to any contractor employed by any such occupier, that any place in which work is carried on for the purpose of or in connexion with the business of the factory or workshop is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor after the expiration of one month from receipt of the notice gives out work to be done in that place, and the place is found by the court having cognizance of the case to be so injurious or dangerous, he shall be liable on summary conviction to a fine not exceeding ten pounds.

(2.) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3.) Provided that this section shall not apply except in the case of persons employed in such classes of work, and in the case of persons giving out employment and employed within such areas, as may from time to time be specified by the Secretary of State by order made in accordance with section sixty-five of the prin-

(i) It had been found by previous experience that the limits here prescribed afforded a good general working rule, and the Home Secretary so stated in the House of Commons.

(k) See the section, *ante*, pp. 1083, 1084.

(l) See sections 3 and 4 of the principal Act, *ante*, p. 1080, and sections 1 and 2 of the Act of 1891, *ante*, p. 1306.

(m) See section 4 of the principal Act and the note thereto, *ante*, p. 1080.

(n) See the section here amended, *ante*, p. 1307.

Appendix.

principal Act, (a) and no such order shall be made except with respect to an area where, by reason of the number and distribution of the population or the conditions under which work is carried on, there are special risks of injury or danger to the health of the persons employed and of the district.

Penalty for allowing wearing apparel to be made in place where there is infectious disease.

VI. If any occupier of a factory or workshop or laundry or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds.

* * * * *

Provisions for escape from fire.

X. (1.) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that the provision of a moveable fire escape or moveable fire escapes is required for the safety of any of the persons employed in a factory or workshop, by order require the occupier of the factory or workshop to provide and maintain a moveable fire escape or moveable fire escapes sufficient for that purpose.

(2.) While any person employed in a factory or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, shall not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

(3.) In every factory or workshop the construction of which is commenced after the commencement of this Act, the doors of each room in which more persons than ten are employed, shall, except in the case of sliding doors, be constructed so as to open outwards.

(4.) Sub-section one of section seven of the Act of 1891 shall apply to all workshops the construction of which is commenced after the commencement of this Act, and in which more than forty persons are employed, in like manner as it applies to factories, and sub-section two of that section shall apply to all workshops to which the foregoing provision of this sub-section does not apply, in like manner as it applies to factories. (b)

(5.) For the purpose of enforcing the provisions of section seven of the Act of 1891 (c) with respect to fire-escapes, an inspector may give the like notice and take the like proceedings as under section four of the principal Act (d) and section two of the Act of 1891, (e) and the provisions of those sections shall apply accordingly.

(6.) If there is any contravention of an order under this section the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings a day during such contravention, and a factory or workshop in which there is a contravention of the requirements of this section shall be deemed not to be kept in conformity with the principal Act.

Provision as to arbitration with respect to fire escapes.

XI. (1.) An application to refer, under section seven of the Act of 1891, a difference as to a notice by a sanitary authority or by the London County Council must be made within one month after the time when the difference arises.

(2.) Where such a difference is referred to arbitration, the notice of the sanitary authority or council shall be discharged, amended, or confirmed in accordance with the award in the arbitration.

(a) See this section, *ante*, p. 1083.

(b) See this section, *ante*, p. 1308. It requires sanitary authorities to examine factories with the view to seeing that they are provided with means of escape from fire. The text extends the section as amended by this section to workshops.

(c) *Ante*, p. 1308.

(d) *Ante*, p. 1083.

(e) *Ante*, p. 1307.

XII. Where any matter in difference is referred to arbitration under section eight of the Act of 1891, the arbitrators or umpire may, on the application of any of the workmen employed in the class of employment to which the arbitration relates, and on such security, if any, as may appear to the arbitrators or umpire sufficient to provide for the costs of and consequential on the application, appoint any person to represent the workmen, or any class of them, on the arbitration, and any person so appointed shall be entitled to attend and take part in the proceedings of the arbitration either in person or by his counsel, solicitor, or agent to such extent and in such manner as the arbitrators or umpire may direct, and shall be subject to the same liability with respect to such costs as aforesaid as if he were a party to the arbitration.(f)

Appendix.

Representation of workmen on arbitration as to special rules.

XIII. Section eighty-two of the principal Act, which provides penal compensation to persons injured by neglect to fence machinery, shall extend to any death or bodily injury or injury to health in consequence of the occupier of a factory or workshop having neglected to observe any provision of the Factory Acts or any special rule or requirement made in pursuance of the Act of 1891. Provided that in the case of injury to health the occupier shall not be liable under this section unless the injury was caused directly by such neglect.(g)

Extension of 41 & 42 Vict. c. 16, s. 82, to death or injury caused by neglect of Act or special rules.

* * * * *

Accidents (h).

XVIII. For section thirty-one of the principal Act the following section shall be substituted, namely,—

Notices of accidents.

(1.) Where there occurs in a factory or workshop any accident which either—

(a.) Causes loss of life to a person employed in the factory or in the workshop ;
or

(b.) Causes to any person employed in the factory or workshop such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work,

written notice shall forthwith be sent to the inspector for the district.

(2.) If the accident causes loss of life, or is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten metal or other substance, or by explosion or escape of gas, steam, or metal, then, unless notice thereof is required by section sixty-three of the Explosives Act, 1875, to be sent to a government inspector, notice thereof shall forthwith be sent to the certifying surgeon of the district.

38 & 39 Vict. c. 17.

(3.) The notice shall state the residence of the person killed or injured, and the place to which he has been removed.

(4.) If any notice required by this section to be sent with respect to an accident in a factory or workshop is not so sent, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(5.) If any accident to which this section applies occurs to a person employed in an iron mill or blast furnace, or other factory or workshop, where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

(6.) This section shall extend to workshops conducted on the system of not employing any child, young person, or woman therein.

XIX. Where a death has occurred by accident in any factory or workshop, the coroner shall adjourn the inquest, unless an inspector or some person on behalf of

Inquests.

(f) See sections 12 of the Act of 1891, *ante*, p. 1310.

(g) Section 82 of the principal Act, *ante*, p. 1085, makes provision for penal compensation to persons injured.

(h) The provisions of this group of sections are extended to cases of lead, phosphorus, or arsenical poisoning, or anthrax occurring in a factory or workshop by section 29 (3), *post*.

Appendix. — a Secretary of State is present to watch the proceedings, and shall at least four days before holding the adjourned inquest send to the inspector notice in writing of the time and place of holding the adjourned inquest.

Provided that if the accident has not occasioned the death of more than one person, and the coroner has sent to the inspector notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the same, it shall not be imperative on him to adjourn the inquest in pursuance of this section if the majority of the jury think it unnecessary so to adjourn.

Register of accidents.

XX. (1.) Every occupier of a factory or workshop shall keep a register of accidents, and shall enter therein every accident occurring in the factory or workshop of which notice is required by the Factory Acts within one week after the occurrence of the accident, and this register shall be at all times open to inspection by the inspector and by the certifying surgeon for the district.

(2.) If any occupier of a factory or workshop makes default in complying with the requirements of this section, he shall be liable on summary conviction to a fine not exceeding ten pounds.

Power to direct formal investigation.

XXI. (1.) Where it appears to the Secretary of State that a formal investigation of any accident occurring in a factory or workshop and its causes and circumstances is expedient, the Secretary of State may direct that such an investigation be held, and with respect to any such investigation the provisions of sections forty-five and forty-six of the Coal Mines Regulation Act, 1887, shall have effect, except that references to the said Act in the said section forty-five shall be construed as references to the Factory Acts.

(2.) This section shall extend to workshops conducted on the system of not employing any child, young person, or woman therein.

50 & 51 Vict. c. 58.

SPECIAL RULES AND REQUIREMENTS.

Laundries.

XXII. (1.) In any laundry carried on by way of trade, or for purpose of gain, the following provisions shall apply:—

- (i.) The period of employment, exclusive of meal hours and absence from work, shall not exceed, for children, ten hours, for young persons, twelve hours, for women, fourteen hours, in any consecutive twenty-four hours; nor a total for children of thirty hours, for young persons and women of sixty hours, in any one week, in addition to such overtime as may be allowed in the case of women.
- (ii.) A child or young person or woman shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.
- (iii.) Children, young persons, and women employed in laundries shall have allowed to them the same holidays as are allowed to children, young persons, and women employed in a factory or workshop under the Factories and Workshops Acts, 1878 to 1895.
- (iv.) So far as regards sanitary provisions, (a) safety, accidents, the affixing of notices and abstracts and the matters to be specified in such notices (so far as they apply to laundries), notice of occupation of a factory or workshop, powers of inspectors, fines, and legal proceedings for any failure to comply with the provisions of this section, and education of children, the Factory Acts shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop; and as if every occupier of a laundry were the occupier of a factory or of a workshop.

(a) See 41 & 42 Vict. c. 16, ss. 3 and 4, *ante*, p. 1080, and section 1 of this Act, *ante*, p. 1354.

Application of Factory Acts to laundries.

(v.) The notice to be affixed in each laundry shall specify the period of employment and the times for meals, but the period and times so specified may be varied before the beginning of employment on any day. Appendix.

(vi.) Sections seventeen and eighteen of the Act of 1891 shall apply to laundries in like manner as to factories or workshops.

(2.) In the case of every laundry worked by steam, water, or other mechanical power—

(a.) a fan or other means of a proper construction shall be provided, maintained, and used for regulating the temperature in every ironing-room, and for carrying away the steam in every washhouse in the laundry; and

(b.) all stoves for heating irons shall be sufficiently separated from any ironing-room, and gas irons emitting any noxious fumes shall not be used; and

(c.) the floors shall be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which these provisions are contravened shall be deemed to be a factory not kept in conformity with the principal Act.

(3.) Nothing in this section shall apply to any laundry in which the only persons employed are—

(a.) inmates of any prison, reformatory, or industrial school, or other institution for the time being subject to inspection under any Act other than the Factory Acts; or

(b.) inmates of an institution conducted in good faith for religious or charitable purposes; or

(c.) members of the same family dwelling there,

or in which not more than two persons dwelling elsewhere are employed.

(4.) Women employed in laundries may work overtime, subject to the following conditions:—

(a.) No woman shall work more than fourteen hours in any day.

(b.) The overtime worked shall not exceed two hours in any day.

(c.) Overtime shall not be worked on more than three days in any week or more than thirty days in any year.

(d.) The requirements of section sixty-six of the principal Act and of section fourteen of the Act of 1891 with respect to notices shall be observed.

* * * * *

Tenement Factories.

XXIV. (1.) Where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft in such manner that those parts constitute in law separate factories, the owner (whether or not he is one of the persons so in occupation) of the building (which building is hereafter in this Act referred to as a tenement factory) shall, instead of the occupier, be liable for the observance, and punishable for non-observance, of the following provisions, namely:

Substitution of owner of tenement factory for occupier for certain purposes.

(a.) Section three of the principal Act, with respect to the sanitary condition of a factory; (a) and

(b.) Sections five and eighty-two (b) of the principal Act, with respect to the fencing of machinery in a factory, except so far as those sections relate to such parts of the machinery as are supplied by the occupier; and

(c.) Save as hereinafter provided, section nineteen of the principal Act, with respect to the notices to be affixed in a factory, and the matters to be specified therein; and

(a) See this section, *ante*, p. 1080.

(b) See this section, *ante*, p. 1085.

Appendix.

(d.) Section thirty-three of the principal Act, (a) with respect to the limewashing and washing of the interior of a factory, so far as it relates to any engine house, passage, or staircase, or to any room which is let to more than one tenant; and

(e.) Section thirty-six of the principal Act, with respect to the removal of dust, so far as that section requires the supply of pipes or other contrivances necessary for working the fan or other means for that purpose, and except in textile factories; and

(f.) Section seventy-eight of the principal Act, with respect to the affixing of an abstract and notices. (b)

(2.) Where different industries are carried on in the same tenement factory, the obligation to affix the notice required by section nineteen of the principal Act shall be on the occupier and not on the owner.

(3.) Sections eight to eleven of the Act of 1891, (c) shall, if and as far as in the case of a tenement factory the Secretary of State by order so directs, apply as if the owner of the factory were substituted for the occupier.

(4.) The provisions of this Act (d) with respect to the power to make orders in the case of dangerous premises shall apply in the case of a tenement factory as if the owner were substituted for the occupier.

(5.) Where, by or under this section, the owner of a tenement factory is substituted for the occupier with respect to any provisions of the Factory Acts, any summons, notice, or proceeding, which for the purpose of any of those provisions is by the said Acts or any of them authorised or required to be served on or taken in relation to the occupier, is hereby authorised or required (as the case may be) to be served on or taken in relation to the owner. (e)

(6.) For the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building.

(7.) This section shall not apply in the case of any occupier paying a rent in excess of two hundred pounds a year.

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Bakehouses.

Provisions as to
bakehouses.

XXVII. (1.) Sections thirty-four and thirty-five of the principal Act (f) shall apply to every bakehouse, and so much of those sections as limits the operation thereof to cities, towns, and places having a population of more than five thousand persons shall be repealed.

46 & 47 Vict.
c. 53.

(2.) In section fifteen of the Factory and Workshop Act, 1883, the words, "which was not so let or occupied before the first day of June, one thousand eight hundred and eighty-three," shall be repealed. (g)

(3.) A place under ground shall not be used as a bakehouse unless it is so used at the commencement of this Act, and if any place is so used in contravention of this Act it shall be deemed to be a workshop not kept in conformity with the principal Act.

Special Restrictions as to Employment.

Power to pro-
hibit or restrict
employment in
dangerous
trade.

XXVIII. (1.) Section eight of the Act of 1891 (h) shall extend to authorise the making of special rules or requirements prohibiting the employment of, or modifying

(a) *Ante*, p. 1081.

(b) *Ante*, p. 1084.

(c) *Ante*, p. 1309.

(d) Section 2, *ante*, p. 1355.

(e) As to the service of these documents, see section 48, *post*.

(f) *Ante*, p. 1081.

(g) See this section, *ante*, p. 1176.

(h) *Ante*, p. 1309.

or limiting the period of employment for, all or any classes of persons in any process or particular description of manual labour which is certified by the Secretary of State in pursuance of that section to be dangerous or injurious to health, or dangerous to life or limb. Provided that any special rules or requirements under this section which relate to the employment or period of employment of adult workers shall be laid for forty days before both Houses of Parliament before coming into operation.

(2.) Sections eight to twelve of the Act of 1891⁽ⁱ⁾ are hereby declared to extend to workshops conducted on the system of not employing any child, young person, or woman therein.

Special Provisions for Health.

XXIX. (1.) Every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorus, or arsenical poisoning, or anthrax, contracted in any factory or workshop, shall (unless the notice required by this section has been previously sent) send to the Chief Inspector of Factories at the Home Office, London, a notice stating the name and full postal address of the patient and the disease from which in the opinion of the medical practitioner the patient is suffering, and shall be entitled in respect of every notice sent in pursuance of this section to a fee of two shillings and sixpence to be paid as part of the expenses incurred by the Secretary of State in the execution of the principal Act.

Notification of certain diseases to chief inspector.

(2.) If any medical practitioner, when required by this section to send a notice, fails forthwith to send the same, he shall be liable to a fine not exceeding forty shillings.

(3.) Written notice of every case of lead, phosphorus, or arsenical poisoning, or anthrax, occurring in a factory or workshop, shall forthwith be sent to the inspector and to the certifying surgeon for the district; and the provisions of the Factory Acts with respect to accidents^(k) shall apply to any such case in like manner as to any such accident as is in those sections mentioned.

(4.) The Secretary of State may by order made in accordance with section sixty-five of the principal Act^(l) apply the provisions of this section to any other disease occurring in a factory or workshop, and thereupon this section and the provisions referred to therein shall apply accordingly.

XXX. (1.) In every factory or workshop where lead, arsenic, or any other poisonous substance is used, suitable washing conveniences shall be provided for the use of the persons employed in any department where such substances are used.

Lavatories in dangerous trades.

(2.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act.

XXXI. (1.) The Cotton Cloth Factories Act, 1889, shall apply to every textile factory in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and which is not for the time being subject to special rules under section eight of the Act of 1891, with such modifications of the schedule with respect to the maximum limits of humidity as the Secretary of State by order made in accordance with section sixty-five of the principal Act may direct.

Provisions as to humid factories. 52 & 53 Vict. c. 62.

(2.) In section nine of the Cotton Cloth Factories Act, 1889, the words "and the arrangements for such ventilation shall be kept in operation subject, as far as possible, to the control of the persons employed therein," shall be repealed.

XXXII. (1.) In every factory and workshop adequate measures shall be taken for securing and maintaining a reasonable temperature in each room in which any person is employed.

Temperature in factories and workshops.

(2.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act.

(i) *Ante*, p. 1309.

(k) See the provisions of this Act as to accidents, section 18, *ante*, p. 1357.

(l) *Ante*, p. 1083.

Appendix.

Amendment of
41 & 42 Vict.
c. 16, s. 36, as to
use of fans.

XXXIII. Section thirty-six of the principal Act shall extend to any factory or workshop where any process is carried on by which any gas, vapour, or other impurity is generated and inhaled by the workers to an injurious extent.

MISCELLANEOUS AMENDMENTS.

* * * * *

Sanitary
conveniences.
53 & 54 Vict.
c. 53.

XXXV. (1.) In every place where section twenty-two of the Public Health Acts Amendment Act, 1890, (a) is not in force every factory or workshop shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at the factory or workshop, and also where persons of both sexes are employed or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex.

(2.) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with the principal Act.

* * * * *

Power to treat
separate
branches as
separate
factories.

XXXIX. The Secretary of State may by order made in accordance with section sixty-five of the principal Act (b) direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of the Factory Acts, be treated as if they were different factories or workshops.

* * * * *

Notice of
existing
workshops.

XLI. Every person who is in occupation of a workshop at the commencement of this Act shall before the expiration of twelve months from the commencement of this Act, unless he has already done so in pursuance of section twenty-six of the Act of 1891, (c) serve on the inspector for the district a written notice containing the name of the workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, and the name of the person or firm under which the business of the workshop is carried on, and in default shall be liable to a fine not exceeding five pounds. Any notice so served shall be forthwith forwarded to the sanitary authority of the district in which the workshop is situate.

Amendment and
extension of
54 & 55 Vict.
c. 75, s. 27,
respecting lists
of out-workers.

XLII. (1.) Every occupier of a factory or workshop to whom section twenty-seven of the Act of 1891 (d) for the time being applies, and every contractor employed by any such occupier in the business of the factory or workshop, shall, on or before the first day of March and the first day of September in each year, send to the inspector for the district in which the factory or workshop is situate a list showing the names of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop outside the factory or workshop, and the places where they are employed, and in default of so doing shall be liable to a fine not exceeding forty shillings.

(2.) Section twenty-seven of the Act of 1891 and this section shall apply to any place from which any work of making wearing apparel for sale is given out, and to the occupier of that place, and to every contractor employed by any such occupier in connexion with the said work, as if that place were a workshop.

Evidence as to
failure to
limewash.

XLIII. Failure to enter in the register kept in pursuance of section seventy-seven of the principal Act (e) the prescribed particulars as to lime-washing shall be *prima facie* evidence of failure to observe the requirements of the Factory Acts with respect to lime-washing.

(a) See this section, *ante*, p. 576.

(b) *Ante*, p. 1083.

(c) See this section, *ante*, p. 1311.

(d) See this section, *ante*, p. 1311.

(e) *Ante*, p. 1084.

XLIV. (1.) In sections sixty-six(*f*) and seventy-five of the principal Act the words "the inspector for the district" shall be substituted for the words "an inspector" wherever they occur in those sections. **Appendix.**

Amendment of
41 & 42 Vict.
c. 16, ss. 66, 75,
and 54 & 55 Vict.
c. 75, s. 29.

(2.) In section twenty-nine of the Act of 1891(*g*) the words "the factory inspector for the district within which the offence is charged to have been committed" shall be substituted for the words "a factory inspector."

* * * * *

XLVII. Every order made in accordance with section sixty-five of the principal Act(*f*) shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons interested. **Publication of orders.**

XLVIII. Any notice, order, requisition, summons, or document, required or authorised by the Factory Acts to be served on the owner, as defined by this Act, of a factory or workshop, may be served by delivering the same or a true copy thereof to the agent of the owner as so defined. **Service of documents on owner.**

XLIX. A person charged with an offence under the Factory Acts may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon he may give evidence in the same manner and with the like effect and consequences as any other witness. **Competency of defendant to give evidence.**

L. Where, in pursuance of section eighty-seven of the principal Act(*h*) some person other than the occupier of a factory or workshop is brought before a court of summary jurisdiction, and convicted of an offence with which the occupier was charged, that person shall in the discretion of the court be liable to pay any costs incidental to the proceeding. **Payment of costs by actual offender in lieu of occupier.**

LI. An inspector, if so authorised in writing under the hand of the Secretary of State, may, although he is not a counsel, or solicitor, or law agent, prosecute, conduct, or defend, before a court of summary jurisdiction or justice, any information, complaint, or other proceeding arising under the Factory Acts, or in the discharge of his duty as such inspector. **Right of inspector to conduct proceedings before magistrates.**

* * * * *

LIII. In this Act, unless the context otherwise requires—

Interpretation.

(1.) The expression "the Factory Acts" means the Factory and Workshop Acts, 1878 to 1891, and this Act:

The expression "the principal Act" means the Factory and Workshop Act, 1878:(*i*)

The expression "the Act of 1891" means the Factory and Workshop Act, 1891:(*k*)

The expression "owner" has the meaning given to it by section four of the Public Health Act, 1875:(*l*)

38 & 39 Vict.
c. 55.

(2.) References to any section of the Factory Acts shall be construed as references to that section as amended by subsequent enactments, including this Act.

* * * * *

LV. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-six. **Commencement of Act.**

LVI. This Act may be cited as the Factory and Workshop Act, 1895, and shall be construed as one with the Factory and Workshop Acts, 1878 to 1891, and those Acts and this Act may be cited collectively as the Factory and Workshop Acts, 1878 to 1895. **Short titles and construction.**

* * * * *

(*f*) See this section, *ante*, p. 1083.

(*g*) See this section, *ante*, p. 1312.

(*h*) See this section, *ante*, p. 1085.

(*i*) *Ante*, p. 1080.

(*k*) *Ante*, p. 1306.

(*l*) *Ante*, p. 6.

APPENDIX II.

IN the last previous edition of this work such of the then more recently issued Orders of the Local Government Board under the Public Health Acts as were of sufficient importance were included in Appendix II. as a new feature of the work, and were arranged therein in the order of the sections of the Acts under which they had been issued.

The present Editors, having regard to the increased number of such documents necessary to be included in this edition in order to bring it up to date, have thought it advisable not only to complete the collection by adding the few sufficiently important Orders of an earlier date than any included in the last previous edition, but also to adopt a new method of arrangement under general titles in alphabetical sequence, which the Editors trust will make it easier for their readers to find any particular regulation. The scheme appears clearly from the Table of Contents prefixed to this edition.

ACCOUNTS AND AUDIT.

Although by section 58 of the Local Government Act, 1894 (*ante*, p. 754), it is (amongst other things) enacted that the accounts of district councils shall be made up in such form as the Local Government Board prescribe, the Board have not as yet prescribed any such form since the commencement of that Act. The Board have, however, in a circular dated the 24th December, 1894, stated that, pending the issue of an Order for Accounts, rural district councils should keep their accounts in the form adopted by rural sanitary authorities. As regards the accounts of urban district councils, the Editors have deemed it advisable under the circumstances to set out the body of the General Order of the 22nd March, 1880, with the accompanying Circular, as to the accounts of local boards, omitting the forms, which can be procured, in a shape revised for present practical use, from the publishers of this work.

ACCOUNTS OF LOCAL BOARDS—CIRCULAR.

(22nd March, 1880.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

22nd March, 1880.

SIR,—I am directed by the Local Government Board to forward to you herewith three copies of an Order which they have issued under section 245 of "The Public Health Act, 1875," (*a*) and section 3 of "The District Auditors Act, 1879," (*b*) prescribing regulations with respect to the accounts of local boards and their officers.

(*a*) *Ante*, p. 325.

(*b*) *Ante*, p. 1101.

The only explanatory observations which the Board think it necessary to make relate to those portions of the Order headed— **Appendix.**

LOCAL BOARD'S ACCOUNTS ;
SURVEYOR'S ACCOUNTS ;
ACCOUNTS OF COLLECTORS AND OTHER OFFICERS ; and
FINANCIAL STATEMENT.

The books and accounts included under the first heading are, a minute book (such book, for the purpose of accounts, being regarded as a journal), a ledger, a highway repairs expenditure account, and an order check-book.

Having regard to section 189 of "The Public Health Act, 1875," (c) the Board have left it to the local board to give directions as to the particular officer by whom these books and accounts are to be kept. The Order, moreover, contains no provision for the examination, except by the district auditor, of these or any of the other accounts prescribed. In this respect also, it rests with the local board to make such regulations as they may think proper.

The arrangement as regards the ledger follows that set forth in the instructional letter issued by the Secretary of State for the Home Department in the year 1864, subject to such alterations in the headings as appeared to be necessary, and the introduction of additional accounts with reference to loans. The experience of the Board has shown the importance of having all transactions under this head recorded in greater detail, and they have accordingly required a separate series of accounts to be kept as regards each loan.

The Highway Repairs Expenditure Account is requisite for the purposes of section 13 of "The Highways and Locomotives (Amendment) Act, 1878." (d) Under that section the local board, as the highway authority, are to be repaid by the county authority one-half of the "expenses incurred in the maintenance" of main roads, or, following the construction in the last paragraph of that section, "the cost of repairs defrayed out of current rates." All expenditure for "repairs" must therefore be shown separately from other highway expenditure, and the account now in question is limited to repairs only.

The Board have regarded the provision in section 13 which relates to repayment by the county authority, as intended to apply to expenses incurred in actual repairs of main roads, and not to include the salary of the surveyor, or such other charges as are incurred in common for the whole of the roads in the district. Such charges could, for the purposes of the section, be only dealt with by way of estimate or apportionment, for which the Board are unable to find any sufficient authority.

The Highway Repairs Expenditure Account is arranged according to the headings under which such expenditure has usually been classified, viz. :—Manual Labour, Team Labour, Materials, Tradesmen's Bills and Miscellaneous. Experience having shown, however, that considerable difference of opinion had prevailed among highway authorities as to the precise items to be included under those headings, particularly as regards "Manual Labour" and "Materials," the Board, in their orders for accounts issued last year to highway boards and parish surveyors, gave such definitions as appeared to them to be clear and comprehensive, and these, with the necessary modifications, have been reproduced in Article 25 of the present Order.

Under the heads of Manual Labour, Team Labour, and Materials, columns are introduced to show the particulars of work performed or materials supplied under contracts.

It may here be convenient to point out that under Art. 25 of the Order, contracts of a general nature are to be dealt with under the head of Manual Labour, and that it is only when they are entered into for a specific class of repairs, such as materials or team labour exclusively, that they are to be dealt with under either of the latter heads.

Under all of the four headings, the column for "Amounts Paid" is subdivided, so as to show the portions expended respectively on the repairs of main roads and other roads.

The surveyor's accounts comprise a wages account, a stores account, and (in

(c) *Ante*, p. 260.

(d) *Ante*, p. 1091. As to the expenses of maintenance of main roads, see now section 11 of the Local Government Act, 1888, *ante*, p. 490.

Appendix. cases where that officer receives or pays any money on behalf of the local board) a cash account and a general receipt check book.

The wages book is intended to show all payments made to labourers, whatever the description of the work may be on which they are employed, but as the entries in this book will be the basis of the highway repairs expenditure account, the wages in respect of highway repairs are to be shown in separate columns under the three headings, Manual Labour, Team Labour, and Materials, with the subdivision in each case of Main Roads and other roads.

Under the division "Accounts of Collectors and other Officers," provision is made in the Order for the following books and accounts (amongst others):—a rate collection account, a rate receipt check book, and a collecting and deposit account.

The Order does not specify any form of rate, as this is subject to the discretion of the local board under section 222 of "The Public Health Act, 1875."^(a) The "Rate Collection Account," which contains detailed particulars in regard to the collection, may be combined in one book with the rate, or may be kept in a separate book. The Board are aware that in many cases the rate book is entered up by the clerk, and not by the collector, and they have made provision in the Order for this arrangement where it may appear to the local board to be preferable.

As regards the rate receipt check book, the present order does not, like the other Orders issued by the Board with respect to rates, contain regulations as to the mode in which the receipts are to be prepared, nor does it require demand notes to be used. It rests with the local board themselves to make such regulations in these respects as may seem to them most advisable.

The Collecting and Deposit Account is not confined to rates, but is intended to include moneys received by the collector from other sources.

The accounts which the Board have prescribed as regards the collector have reference mainly to his responsibility to the district auditor. Under section 195, paragraph 1, of "The Public Health Act, 1875,"^(b) it devolves on the local board to prescribe when and in what manner the accounts of moneys received and paid by any of their officers for the purposes of that Act, shall be made out to the local board, and paragraph 2 of that section provides for payment to the treasurer of moneys so received, and empowers the local board to make their own arrangements as regards the delivery of lists of persons whose rates are unpaid. The Board have accordingly omitted in the present Order the usual provisions in those respects.

The financial statement^(c) prescribed by the present Order includes the totals of the receipts and expenditure of the local board as a burial board, where they act in the latter capacity, the details of such receipts and expenditure being shown in a separate statement. The Board have, therefore, issued an Order (two copies of which are enclosed) rescinding to the extent therein specified the Order relating to the Financial Statements of Local Boards, dated the 29th of April last.

It will be seen that all accounts must be made up and balanced to the 25th of March in every year.^(d)

I am, sir, your obedient servant,

JOHN LAMBERT, *Secretary.*

To

The Clerk to the Local Board.

(a) *Ante*, p. 301.

(b) *Ante*, p. 269.

(c) See note to Article 24, *post*.

(d) See section 245 of the Public Health Act, 1875, *ante*, p. 325, and section 58 of the Local Government Act, 1894, *ante*, p. 754.

ACCOUNTS OF LOCAL BOARDS—GENERAL ORDER.

(22nd March, 1880.)

To THE LOCAL BOARDS,^(e) for the time being, of the several Local Government Districts in England and Wales;—

To the District Auditors within whose Districts the said Local Government Districts are, for the time being, respectively included;—

And to all others whom it may concern.

WHEREAS by section 245 of “The Public Health Act, 1875,”^(f) it is enacted that the accounts of the receipts and expenditure under that Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint;

And whereas by section 5 of “The District Auditors Act, 1879,”^(g) it is enacted as follows :

“Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834.”

And whereas local boards for local government districts are local authorities within the meaning of the sections above cited :

Now therefore, we, the Local Government Board, in pursuance of the powers given to us by the statutes in that behalf, hereby order as follows :

Art. 1. The several regulations in this Order contained shall, from and after the twenty-fifth day of March, one thousand eight hundred and eighty, be observed in regard to the accounts of the local board, for the time being, of every local government district in England and Wales, and of their officers, and in regard to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

CLOSING OF ACCOUNTS.

Art. 2. All the accounts of the local board and their officers shall be made up and balanced to the twenty-fifth day of March in every year.

LOCAL BOARD'S ACCOUNTS.

Art. 3. The clerk or other officer duly authorised by the local board shall enter from time to time at proper dates in the *Minute Book* of the local board, according to the Form (A.) in the schedule to this Order, a statement of all orders drawn on the treasurer, and of all moneys paid or received on behalf of the local board, and of all minutes relating to the allocation or division of charges, or any other pecuniary transaction of the local board, and shall insert marginal notes of reference

(e) A General Order for Accounts, dated 8th March, 1881, was issued to the Improvement Commissioners of the several Improvement Act districts in England and Wales in terms exactly similar to those of this Order, except for the difference noted on Article 4 of this Order, *post*.

(f) *Ante*, p. 325. See section 58 of the Local Government Act, 1894, *ante*, p. 754.

(g) *Ante*, p. 1102.

Appendix. to the respective folios of the ledger in which the items relating to any of such orders, payments, receipts, or other pecuniary transactions are entered.

Art. 4. The clerk or other officer duly authorised by the local board shall accurately and punctually enter up and keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this Order and in the schedule thereto, namely:

(1.) *A Ledger*, in the Form (B.), in which the items contained in the minute book of the various transactions relating to the receipt or payment of moneys in respect of the district, or of any part thereof, shall be entered and posted up according to their proper dates, under the following heads of subordinate accounts (or as many thereof as may be necessary), and such additional heads as may be or may from time to time become necessary, viz.:

Subordinate Accounts of Public Works:

Sewerage.	Street Works and Improvements.
Water Supply.	Baths and Washhouses.
Gas Supply.	Market Places.
Repairs of Highways (Main Roads).	Slaughter Houses.
Repairs of Highways (other Roads).	Pleasure Grounds.
Scavenging.	Hospitals.
Watering.	Sale of Surplus Lands.

Subordinate Accounts of Private Works:

Drainage.	Water Supply.	Street Works.
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Subordinate Accounts of a General Character:

Salaries of Officers.	Collector's Account.
Establishment Charges, other than Salaries.	Surveyor's Account.
Elections.	Treasurer's Account.
Surveys and Plans.	School Attendance Committee Account.
Legal Expenses.	Invoice Account, or Tradesmen's Account.
Compensations.	

And with reference to every loan obtained by the local board, there shall be kept in the ledger separate accounts under the following heads, so far as the same are applicable to the loan:—

- The treasurer, in respect of his receipts and payments on account of the loan.
- The lender, in respect of the advance and repayment of the loan, and of the payment of the interest thereon.
- The permanent works for which the loan is obtained.
- The instalments.
- The interest on the loan.
- The sinking fund.

At the end of every year, or oftener, if directed by the local board, the expenditure so entered under the foregoing subordinate accounts shall be allocated or divided under the directions of the local board amongst the following chief accounts, or such others as may be deemed necessary, viz.:

- District Fund Account.
- General District Rate Account.
- Private Improvement Rate or Expenses Account.
- Water Rate Account.
- Highway Rate Account.

At the end of every half year a balance sheet or general balance account shall be duly entered in the ledger. (a)

In connection with the several items in each of the accounts mentioned in No. (1) of this Article, the respective dates of the transactions shall be inserted, together with references to the folios of the minute book in which the entries relating to such transactions are contained, and to the folios of the corresponding debits and credits respectively.

(a) In Improvement Act districts, under the General Order for Accounts, 8th March, 1881, the corresponding balance sheet was only required to be entered in the ledger at the end of every year.

(2.) *A Highway Repairs Expenditure Account*, in the Form (C.), in which shall be entered weekly (or at such other period as the local board may direct), under the four following headings,—

1. Manual Labour ;
2. Team Labour ;
3. Materials ;
4. Tradesmen's Bills and Miscellaneous ;

the particulars of the payments made for repairs of the highways, according to the arrangement of the columns under each of those headings, the payments being shown separately as regards main roads and other roads in the columns provided for that purpose.

(3.) *An Order Check Book*, in the Form (D.), which shall contain all orders given by the local board for stores, or other articles, for repairs, or for work, and counterfoils of such orders, and forms of the invoices to accompany commodities supplied, or to be delivered when work is done. Such orders, when duly signed by the clerk or other officer duly authorised, together with the forms of invoice, shall be detached from the said book, and issued to the tradesmen or other persons dealt with or employed, to be returned and disposed of in the manner directed in the Form ; and the counterfoils, duly signed, shall be retained in the said book.

TREASURER'S ACCOUNT.

Art. 5. The treasurer of the local board shall keep an account according to the Form (E.) in the said schedule, in which shall be entered punctually and accurately all moneys received and paid by him on behalf of the local board. He shall balance and sign this account quarterly, or at such other times as may be directed by the local board.

SURVEYOR'S ACCOUNTS.

Art. 6. The surveyor shall accurately and punctually enter up the following accounts, according to the forms and directions relating to such accounts respectively in this Order and in the schedule thereto, namely :

(1.) *A Wages Account* in the Form (F.), in which shall be entered the names of the labourers employed by the local board, the days on which, as well as the places at and the work on which they were so employed, the rate of pay, and the amount of wages earned, together with the date of payment.

This account shall also distinguish, as regards repairs of the highways, the amounts in respect of main roads from those in respect of other roads, under the following divisions :—

1. Manual Labour.
2. Team Labour.
3. Materials.

If the local board deem it more convenient, this form may be kept in separate sheets, instead of in a book, and each sheet may, if the local board so direct, be arranged so as to contain such particulars only as relate to a specific description of work, whether in respect of highways or otherwise.

The surveyor shall, at the time of payment, obtain the signatures of the labourers in the column provided for that purpose, or if any of them are unable to write, they shall affix their marks, which shall be duly attested in acknowledgment of the receipt of the money.

The surveyor shall also sign his name in the place provided for that purpose at the foot of the form.

Provided that where, under the directions of the local board, the wages of the labourers are paid by the clerk or other officer, instead of the surveyor, the above requirements in regard to entering the date of payment and obtaining the labourers' signatures or marks, shall not apply to the surveyor, but shall apply to the clerk or other officer as aforesaid.

(2.) *A Stores Account*, in the Form (G.), in which, under separate divisions, according to the directions appended to the form, shall be entered on one side, in order of date, the quantities, prices, and cost of stores received, and on the other side the quantities, prices, and cost of stores expended, as well as the places where and the purposes for which they were expended.

The Stores Account shall be balanced as required by Article 2, and at such other times as the local board may direct.

Appendix.

Appendix.

(3.) If the surveyor, under the directions of the local board, receives any money, or makes any payments on their behalf, he shall enter such receipts and payments in a *Cash Account*, according to the Form (M.), and use a *General Receipt Check Book*, according to the Form (L.).

ACCOUNTS OF COLLECTORS AND OTHER OFFICERS.

Art. 7. In the case of every rate which may be levied by the local board, there shall be kept, either in the same book with the rate, or in a separate book, a *Rate Collection Account*, which account shall be in the Form (H.) in the schedule to this Order, or in a form to the like effect, and shall be accurately and punctually entered up every week by the collector, in accordance with the directions appended to the said form, and shall be duly signed by him when balanced.

Provided that where the said *Rate Collection Account* is kept in the same book as the rate, the columns headed "Number of Assessment" and "Amount of Rate at in the Pound" may be omitted from the form.

Provided also, that if the local board deem it advisable that the *Rate Collection Account* should be kept by their clerk, such account may be kept and signed by the clerk accordingly, instead of by the collector.

The *Rate Collection Account* shall be balanced as required by Article 2, and if the rate to which it relates is closed at any other time than the 25th day of March, then also at such closing of the rate.

Art. 8. The collector shall keep a *Collecting and Deposit Account*, in the Form (I.), in which shall be entered accurately, and under their true dates, all sums received by him as such collector or paid over by him to the treasurer of the local board.

Art. 9. The collector shall, in the collection of every rate, use a *Rate Receipt Check Book*, in the Form (K.) in the said schedule, or in such other form as the local board may direct, applicable to one or to several rates as they may think fit. The receipts and counterfoils in this book shall be numbered consecutively according to the numbers or assessments in the rate book.

When the amount of the rate shall be received from any person assessed, the receipt applicable to such person's assessment shall, at that time and not before, be signed by the collector and detached from the *Rate Receipt Check Book*, and shall be delivered, stamped with an adhesive stamp, where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil, duly filled up, shall be retained in the book. In the receipt so delivered, and in the counterfoil so retained, the true date of the payment shall be inserted.

If upon the closing of any rate not fully collected there shall remain in the *Rate Receipt Check Book* any receipts made out for such rate unused, the collector shall enter upon each of such receipts the reason for not using it, and date and sign such entry.

Art. 10. Whenever money is received by the collector otherwise than in respect of rates, or by the clerk or other officer, on behalf of the local board, he shall duly fill up one of the receipts and counterfoils in the *General Receipt Check Book*, Form (L.), and shall deliver the receipt (stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary) to the person making the payment, and shall retain the counterfoil in the book. Such receipts and counterfoils shall bear corresponding numbers in consecutive order.

Art. 11. If the clerk, or any other officer except the treasurer and collector, shall, under the directions of the local board, receive or pay moneys on their behalf, he shall keep a *cash account*, according to the Form (M.) in the schedule to this Order, and such account shall be balanced at such times as the local board may direct.

AUDIT.

Art. 12. The district auditor shall audit the accounts of the local board and their officers once in every year, that is to say, as soon as may be after the twenty-fifth day of March. Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions

herein contained with reference to the ordinary audit shall, so far as they may be applicable, apply to such extraordinary audit. **Appendix.**

Art. 13. The clerk and the other officers of the local board who by law are liable to account to the district auditor shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to him all books and accounts which they are respectively required to keep by this or any other order of the Local Government Board, or by the local board, together with all documents and vouchers containing or relating to such books or accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer interested in such accounts, but to such extent and in such manner only as will not, in the judgment of the said district auditor, interfere with the audit.

Art. 14. In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into account, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law.

Art. 15. When the district auditor disallows any payment or surcharges any sum upon any person he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Local Government Board.^(a)

Art. 16. The district auditor shall examine and collate the several books and papers of account; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required; but in case of any error caused by inadvertence or accident in any account he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction, and report the circumstances of the case to the Local Government Board.

Art. 17. The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 18. The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 19. If the district auditor shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels, relating to the local government district, to appear before him, and

(a) As to appeals to the Local Government Board by members and officers of local authorities against disallowances and surcharges by a district auditor, see Instructions, dated July, 1894, *post*.

Appendix. shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person as may then appear, and such accounts, books, and papers as may be produced before him, respecting such account, item, or charge.

Art. 20. If the district auditor find that any money, goods, or chattels belonging to the local board, have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such surcharge to the local board as soon as he conveniently can do so.

Art. 21. The personal representatives of an officer accountable under this Order, dying before the audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 22. The district auditor having audited the several accounts in the ledger, shall sign a certificate at the foot of the balance sheet therein, to the following effect:—

“I have examined the several accounts of which the foregoing is the balance sheet, and I have compared the several payments credited to the treasurer with the vouchers, and I hereby certify that the entries appear to be correct and legal. And that [when the balance in the account kept by the treasurer does not agree with the balance in the ledger], subject to the explanation below [the difference to be explained at the foot of the certificate], the balance of the treasurer's account herein, viz., £ , agrees with the balance which by his own account appears to have been in his hands at the time of closing such account.

“Dated .

(Signed)

District Auditor.”

And in the other books the district auditor shall enter a certificate of his having audited the same, and sign and date the same.

Art. 23. The district auditor shall, at the close of each audit, transmit to the Local Government Board a statement in the Form (R.) in the said schedule, showing which of the books and accounts directed by this Order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board.

FINANCIAL STATEMENT.

Art. 24. The Financial statement required to be prepared and submitted to the district auditor in duplicate by the local board, in accordance with the provisions of section 3 of “The District Auditors Act, 1879,” shall be in the Form (O.) in the schedule to this Order, and shall contain the particulars therein specified or referred to; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.(a)

INTERPRETATION OF TERMS.

Art. 25. In this Order and in the forms set forth in the schedule thereto, the term—

“Clerk” means the clerk to the local board.

“District Auditor” means the auditor for the time being in whose district the local government district is included.

(a) This Article was rescinded by an Order, dated the 19th April, 1884, by which a fresh form of Financial Statement was prescribed. In consequence, however, of the provisions of the Local Government Act, 1888, that Order has, in its turn, been rescinded, except in so far as it rescinded this Article, and a still newer form of Financial Statement was prescribed by an Order dated the 25th June, 1890. But, having regard to the passing of the Local Government Act, 1894, since that date, it has not been thought necessary to set out the last-mentioned Order in this Work. Revised forms of Financial Statements can be obtained from the publishers of this Work.

“Rate,” unless otherwise expressed, means any rate or assessment which may be made by the local board under the provisions of “The Public Health Act, 1875.” Appendix.
—

“Surveyor” means a surveyor appointed by the local board under the provisions of section 189 of “The Public Health Act, 1875,” and includes an assistant surveyor, where such an assistant is appointed under those provisions, and where he may be required by the local board to perform any of the duties herein prescribed.

“Main roads” means roads so constituted under “The Highways and Locomotives (Amendment) Act, 1878.”

“Manual labour” means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs, and includes contract work for repairs, where such repairs are let by contract, and where the contract is not made exclusively for the purposes hereinafter described under either of the heads of “team labour” or “materials.”

“Team labour” means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, and includes such labour employed under any contract entered into for those purposes exclusively.

“Materials” means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into for those purposes exclusively, as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

“Tradesmen’s bills” includes the cost of tools, implements, and other stock supplied by tradesmen for repairs, and not hereinbefore included in the term “materials,” and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with “main roads” means tradesmen’s bills for repairs incurred for main roads exclusively.

Given under the Seal of Office of the Local Government Board, this twenty-second day of March, in the year one thousand eight hundred and eighty.

(L.S.)

G. SCLATER-BOOTH, *President*.

John Lambert, *Secretary*.

PURCHASE OF PERIODICAL PUBLICATIONS—MEMORANDUM.

(16th June, 1884.)

MEMORANDUM AS TO THE LEGALITY OF EXPENSES INCURRED BY LOCAL AUTHORITIES IN PURCHASING PERIODICAL PUBLICATIONS.

The Local Government Board have recently had under consideration the question of the legality of the purchase by local authorities, at the cost of the funds under their control, of periodical publications which contain reports of decisions of the courts of law, or other information connected with matters subject to their jurisdiction.

Hitherto the Board have generally considered that the local rates could not legally be expended in the purchase of the publications referred to.

Recently, however, they have seen reason to doubt whether this view could be supported, and they have therefore consulted the law officers of the Crown upon the point. The effect of the opinion given by the law officers is, that if the publications referred to contain information so immediately connected with the discharge of their duties by the local authorities as to be likely to enable them to discharge those duties more efficiently than they could without such publications, the local authorities may legally make the purchase at the cost of the rates.

The Board think it desirable to communicate this opinion to the auditors for their

Appendix. future guidance. It will of course, be for the auditor, subject to appeal to the Board, to decide, in regard to any particular publication, whether it does or does not contain information of the character described; and he should satisfy himself, with reference to the special circumstances of each case, that not more copies of any periodical are purchased than are reasonably necessary.

HUGH OWEN, *Secretary*.

Local Government Board, Whitehall,
16th June, 1884.

APPEALS AGAINST AUDITORS—INSTRUCTIONS FOR MEMBERS AND OFFICERS OF LOCAL AUTHORITIES.

(July, 1894.)

INSTRUCTIONS AS TO THE MODE OF APPEALING TO THE LOCAL GOVERNMENT BOARD AGAINST DISALLOWANCES AND SURCHARGES BY A DISTRICT AUDITOR.(a)

1. If a person affected by a district auditor's certificate of disallowance or surcharge, is aggrieved by the decision of the auditor, he may appeal against it to the Local Government Board.

2. The Board, upon appeal being made to them, are empowered to decide as to the lawfulness of the reasons stated by the auditor for the disallowance or surcharge, and where they uphold his decision, they may, upon payment of the costs (if any) incurred by the auditor in taking steps to enforce payment of the money certified, remit the disallowance or surcharge, if they consider that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that this course should be taken.

3. If the person aggrieved decides to appeal, he must, unless the auditor has already entered his reasons in the book of account in which the disallowance or surcharge was made, apply to the auditor to enter his reasons in that book, and for this purpose the book should be submitted to the auditor.

4. When the auditor has entered his reasons, an exact copy of them and also a copy of the auditor's certificate, including his signature and the date of the certificate, should be forwarded to the Board with the appeal.

5. The appeal should be by letter (on foolscap paper), addressed to the Secretary of the Local Government Board, Whitehall, London, and must be signed by the appellant in his own handwriting. Where two or more persons are mentioned in the auditor's certificate, the appeal must be signed by each of those desirous of appealing.

6. The appeal should contain a full statement of the facts which the appellant may desire to lay before the Board; and the grounds upon which the appeal is made should be explicitly set out. If there are any

- (1) Cheques,
- (2) Bills,
- (3) Vouchers, or
- (4) Other papers or documents

bearing upon the matter, they should be forwarded to the Board, with the appeal; and where there are resolutions of the local authority with reference to the subject-matter of the expenditure, copies of the resolutions should also be sent.

7. Unless an appeal be made against the auditor's decision, the sum certified by him to be due must be paid over as follows:—

(a) Money certified to be due from a member or an officer of a

- (1) *County Council*, or
- (2) *Visiting Committee* of a lunatic asylum belonging wholly or in part to a county council, or
- (3) *Urban Sanitary Authority*,

must be paid within *fourteen days* to the treasurer of the authority.

(a) See section 247 of the Public Health Act, 1875, *ante*, p. 326.

- (b) Money certified to be due from a member or an officer of a
- (1) *Board of Guardians*, or
 - (2) *Board of Management* for a School or Asylum District, or
 - (3) *Rural Sanitary Authority*, or
 - (4) *School Board*, or
 - (5) *Highway Board* or a *Board for repair of the highways* in a highway parish, or from a
 - (6) *Manager of a School* under a school board,
- must be paid over within *seven days* to the treasurer of the authority.

HUGH OWEN, *Secretary*.

Local Government Board, Whitehall, S.W.,
July, 1894.

ACCOUNTS OF RURAL DISTRICT COUNCILS—CIRCULAR.

(26th July, 1895.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.
26th July, 1895.

SIR,—I am directed by the Local Government Board to advert to section 58 of the Local Government Act, 1894,^(b) which directs that the accounts of rural district councils, and of their committees and officers shall be made up to the 31st day of March in each year, and that they shall be audited by a district auditor. The enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, are made applicable accordingly.

The enactments referred to will be found in sections 247 and 250 of the Public Health Act, 1875.^(c) The Board are, however, empowered by sub-section (3) of section 58 of the Local Government Act, 1894, to make rules with respect to the audit of the accounts of rural district councils modifying these enactments in certain particulars.

The Board have accordingly issued an Order,^(d) two copies of which are enclosed, making rules modifying sub-section (10) of section 247 of the Public Health Act, 1875, in relation to the audit of the accounts of rural district councils. The effect of these rules will be that it will not be requisite that the auditor should report to the rural district council on their accounts. It will, however, be the duty of the rural district council on the completion of the audit to publish an abstract of their accounts in some one or more of the local newspapers circulated in their district.

With regard to the deposit of the accounts, the Board may draw attention to sub-section (4) of section 247 of the Public Health Act, 1875, which requires that a copy of the accounts duly made up and balanced, together with all account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts shall be deposited in the office of the rural district council, and be open during office hours to the inspection of all persons interested for seven clear days before the audit, and all such persons will be at liberty to take copies of or extracts from the documents referred to without fee or reward.

It may be convenient to mention that under sub-section (3) of section 247 of the Public Health Act, 1875, it will be the duty of the rural district council, after receiving from the auditor the requisite appointment of the audit, to give at least 14 days' notice of the time and place of audit, and of the deposit of accounts required by the section, by advertisement in some one or more of the local newspapers circulated in the district, and that the production of the newspaper containing such notice will be deemed to be sufficient proof of such notice on any proceeding whatsoever.

(b) *Ante*, p. 754.

(c) *Ante*, pp. 326, 332.

(d) Dated 20th May, 1895, and set out *post*.

Appendix. Under section 3 of the District Auditors Act, 1879,(a) it is requisite that the rural district council should prepare and submit to the auditor at the audit a financial statement in duplicate, in a form prescribed by the Board, and the Board have issued a further Order(b) prescribing a form of financial statement of the receipts and payments of rural district councils for the period from the appointed day under the Local Government Act, 1894, up to the 31st March last. Two copies of the order are enclosed.

For the purpose of preservation and reference, it is desirable that financial statements should be uniform, and the Board therefore request that the form of statement used may be on foolscap paper of the usual size.

The District Auditors Act, 1879, provides that there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty, according to a scale based upon the amount of the expenditure included in the financial statement.

The following is the scale of stamp duties prescribed by the Act:—

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under £20 - - - - -	5s.
£20 and under £50 - - - - -	10s.
£50 and under £100 - - - - -	£1
£100 and under £500 - - - - -	£2
£500 and under £1,000 - - - - -	£3
£1,000 and under £2,500 - - - - -	£4
£2,500 and under £5,000 - - - - -	£5
£5,000 and under £10,000 - - - - -	£10
£10,000 and under £20,000 - - - - -	£15
£20,000 and under £50,000 - - - - -	£20
£50,000 and under £100,000 - - - - -	£30
£100,000 and upwards - - - - -	£50

The stamp must be affixed to or impressed upon the financial statement, and the Commissioners of Inland Revenue have provided adhesive stamps, bearing the words “district audit,” representing the value of 5s., 10s., 1l., 2l., and 5l.; and such stamps will be supplied on application to any distributor or sub-distributor of stamps.

The Commissioners require that where the duty exceeds 5l. it should be denoted by an impressed stamp, and any financial statement liable to duty above this amount will, on being presented to any distributor or sub-distributor, be forwarded by him, free of expense, to the Inland Revenue Department, in order that it may be impressed with the required stamp.

Where any doubt is felt as to the amount of expenditure upon which the stamp is to be assessed, the affixing of the stamp may be postponed until the question has been submitted to the district auditor and determined by him.

I am, sir, your obedient servant,
HUGH OWEN, *Secretary.*

To
The Clerk to the Rural District Council.

(a) *Ante*, p. 1101.
(b) Dated 25th July, 1895, but, being of a temporary character only, this Order is not set out in this Work.

AUDIT OF ACCOUNTS (RURAL DISTRICT COUNCILS, &c.)—GENERAL ORDER.

(20th May, 1895.)

To THE RURAL DISTRICT COUNCIL of every Rural District in England and Wales;—

To the Parish Council of every Parish in England and Wales having a Parish Council;—

To the Parish Meeting of every Rural Parish in England and Wales not having a Parish Council;—

To any Joint Committee of any such Parish Councils and Parish Meetings;—

And to all others whom it may concern.

WHEREAS by sub-section (2) of section 58 of the Local Government Act, 1894,(c) it is enacted that the accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers shall, except as therein mentioned, be audited by a district auditor, and that the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly;

And whereas it is further enacted by sub-section (3) of the said section 58, that we, the Local Government Board, may, with respect to any audit to which such section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditor;

And whereas we deem it expedient that the enactments last referred to should, for the purposes of the audit of the accounts of parish and rural district councils and parish meetings be modified as hereinafter mentioned:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, direct that, unless we shall otherwise direct, the following Rules shall have effect:—

Publication of Notice of Audit of Accounts of Parish Councils and Parish Meetings.(d)

* * * * *

Report of District Auditor on Accounts of Rural District Councils, Parish Councils, Parish Meetings, and Publication of Abstract of Accounts of Rural District Councils.

2. In the application of sub-section (10) of section 247 of the Public Health Act, 1875,(e) to the audit of the accounts of rural district councils, parish councils, and parish meetings, such sub-section shall be modified so as to read as follows:—

“(10.) Within fourteen days after the completion of the audit, the auditor shall send to the Local Government Board a report on the accounts audited and examined by him. Every rural district council shall, on the completion of the audit, publish an abstract of their accounts in some one or more of the local newspapers circulated in their district, and every parish council shall submit to the parish meeting held in the parish next after the completion of the audit a copy of the financial statement of the accounts of such council as certified by the district auditor.”

(c) *Ante*, p. 754.

(d) This part of this Order not concerning sanitary authorities is therefore omitted.

(e) *Ante*, p. 328.

Appendix.

Joint Committees of Parish Councils and Parish Meetings.(a)

* * * * * *

Given under the seal of office of the Local Government Board, this twentieth day of May, in the year one thousand eight hundred and ninety-five.

(L.S.) G. SHAW-LEFEVRE, *President*.

S. B. Provis, *Assistant Secretary*.

ACCOUNTS OF JOINT COMMITTEES OF DISTRICT COUNCILS, &c.— CIRCULAR.

(29th July, 1895.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

29th July, 1895.

SIR,—I am directed by the Local Government Board to advert to section 58 of the Local Government Act, 1894,(b) which directs that the accounts of parish and district councils and of parish meetings for parishes not having parish councils, and of their committees and officers shall be made up to the 31st day of March in each year, and that, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), they shall be audited by a district auditor. The enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, are made applicable accordingly, except that, in the case of the accounts of rural district councils and of their committees and officers, the audit is to be half-yearly instead of yearly.

Joint committees appointed by district councils or by district councils and parish councils or parish meetings, including a joint committee appointed by a borough council with another council not being a borough council, are committees within the meaning of section 58 of the Local Government Act, 1894, and the enactments referred to are applicable to such joint committees.

The enactments above referred to will be found in sections 247 and 250 of the Public Health Act, 1875.(c) The Board are, however, empowered by sub-section (3) of section 58 of the Local Government Act, 1894, to make rules with respect to any audit to which that section applies modifying the enactments so far as they relate to publication of notice of the audit and of the abstract of accounts and the report of the auditor.

The Board have accordingly issued an Order,(d) two copies of which are enclosed, making rules modifying sub-section (3) of section 247 of the Public Health Act, 1875, in relation to the audit of the accounts of joint committees of the kind above referred to. The effect of these rules will be that it will be the duty of the clerk to the joint committee, after receiving the requisite notice of the appointment of the audit from the auditor, to give, either by posting or by advertisement in one or more local newspapers circulated within the district, at least 14 days' notice of the time and place at which the audit will be commenced, and of the deposit of the accounts required by the section; and, on such notice being given, to forward to the auditor a certificate to this effect in a form prescribed by the Board.

If the notice is given by posting, the form of the notice and the manner in which it is posted must under the Order be such as the Board shall have prescribed. The Board have accordingly issued a further Order(e) prescribing the form of notice and directing that the notice shall be posted on or near to the principal door of each church or chapel in the district in respect of which the committee shall have been appointed and in some conspicuous place or places in such district. This Order also

(a) This part of this Order not concerning sanitary authorities is therefore omitted.

(b) *Ante*, p. 754.

(c) *Ante*, pp. 326, 332.

(d) Dated 26th July, 1895, and set out *post*.

(e) This Order being of a temporary character only is not set out in this Appendix.

prescribes two forms of certificate to be sent to the auditor ; the form prescribed by Article III. of the Order will be used when the notice has been given by posting and that prescribed by Article IV. when the notice has been given by advertisement. Two copies of the Order are enclosed.

Appendix.

With regard to the deposit of the accounts, the Board may draw attention to sub-section (4) of section 247 of the Public Health Act, 1875, which requires that a copy of the accounts duly made up and balanced, together with all account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts shall be deposited in some place which for this purpose must be deemed to be the office of the joint committee, and be open during office hours to the inspection of all persons interested for seven clear days before the audit. All such persons will be at liberty to take copies of or extracts from the documents referred to without fee or reward.

Under section 3 of the District Auditors Act, 1879, (f) it is requisite that the joint committee should prepare and submit to the auditor at the audit a financial statement in duplicate, in a form prescribed by the Board, and the Board have by the Order last referred to prescribed the necessary form for the period up to the 31st March last.

For the purpose of preservation and reference, it is desirable that financial statements should be uniform, and the Board therefore request that the form of statement used may be on foolscap paper of the usual size.

The District Auditors Act, 1879, provides that there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty, according to a scale based upon the amount of the expenditure included in the financial statement.

The following is the scale of stamp duties prescribed by the Act :—

Where the total of the expenditure comprised in the financial statement is						The sum shall be
Under £20	-	-	-	-	-	5s.
£20 and under	£50	-	-	-	-	10s.
£50 and under	£100	-	-	-	-	£1
£100 and under	£500	-	-	-	-	£2
£500 and under	£1,000	-	-	-	-	£3
£1,000 and under	£2,500	-	-	-	-	£4
£2,500 and under	£5,000	-	-	-	-	£5
£5,000 and under	£10,000	-	-	-	-	£10
£10,000 and under	£20,000	-	-	-	-	£15
£20,000 and under	£50,000	-	-	-	-	£20
£50,000 and under	£100,000	-	-	-	-	£30
£100,000 and upwards	-	-	-	-	-	£50

The stamp must be affixed to or impressed upon the financial statement, and the Commissioners of Inland Revenue have provided adhesive stamps, bearing the words "District Audit," representing the value of 5s., 10s., £1, £2, and £5, and such stamps will be supplied on application to any distributor or sub-distributor of stamps.

The Commissioners require that where the duty exceeds £5 it should be denoted by an impressed stamp, and any financial statement liable to duty above this amount will, on being presented to any distributor or sub-distributor, be forwarded by him, free of expense, to the Inland Revenue Department, in order that it may be impressed with the required stamp.

Where any doubt is felt as to the amount of expenditure upon which the stamp is to be assessed, the affixing of the stamp may be postponed until the question has been submitted to the district auditor and determined by him.

The Board have also, by their first-mentioned Order, modified the provisions contained in sub-section (10) of section 247 of the Public Health Act, 1875, in

Appendix. — their application to joint committees of the kind mentioned in the Order. It will not be necessary that the auditor should report to the joint committee on their accounts, or that the joint committee should publish an abstract of the accounts in a local newspaper; but the joint committee must submit to the authorities by whom they have been appointed at the meeting of the authorities respectively held next after the completion of the audit a copy of the financial statement of the accounts of the joint committee, as certified by the district auditor.

The Board have no definite information as to the cases in which joint committees have been appointed under the Local Government Act, 1894. If, therefore, the council had appointed members of any such committee before the 31st March last, the Board would be obliged if you would forward to such committee a copy of each of the enclosed Orders and of this circular, and if you would also be so good as to inform the Board of the name of the committee, the purpose for which it was formed, the councils or parish meetings represented on the committee, and the name and address of the clerk.

I am, Sir, your obedient Servant,
HUGH OWEN, *Secretary.*

To

*The Town Clerk, or
The Clerk to the Urban District Council, or
The Clerk to the Rural District Council.*

AUDIT OF ACCOUNTS (JOINT COMMITTEES)—GENERAL ORDER.

(26th July, 1895.)

To THE URBAN DISTRICT COUNCIL of every Urban District in England and Wales;—

To THE RURAL DISTRICT COUNCIL of every Rural District in England and Wales;—

To the Parish Council of every Parish in England and Wales having a Parish Council;—

To the Parish Meeting of every Rural Parish in England and Wales not having a Parish Council;—

To any Joint Committee of any such Councils and Parish Meetings as aforesaid;—

And to all others whom it may concern.

WHEREAS by sub-section (2) of section 58 of the Local Government Act, 1894,(a) it is enacted that the accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers shall, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council) be audited by a district auditor, and that the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly;

And whereas it is further enacted by sub-section (3) of the said section 58, that we, the Local Government Board, may, with respect to any audit to which such section applies, make rules modifying the enactments as to publication of notice of the audit and of the abstract of accounts and the report of the auditors;

And whereas we deem it expedient that the enactments last referred to should, for the purposes of the audit of the accounts of any joint committee, as defined by this Order, be modified as hereinafter mentioned:

Now therefore, we, the Local Government Board, in pursuance of the powers

(a) *Ante*, p. 754.

given to us in that behalf, do, by this our Order, direct that, unless we shall otherwise direct, the following rules shall have effect:— Appendix.

Publication of Notice of Audit of Accounts of Joint Committees.

1. In the application of sub-section (3) of section 247 of the Public Health Act, 1875,^(b) to the audit of the accounts of any joint committee as defined by this Order, such sub-section shall be modified so as to read as follows:—

“(3.) Before each audit of the accounts of a joint committee of district councils, or of a joint committee of a district council or district councils and a parish council or parish meeting or parish councils or parish meetings (including the accounts of a joint committee appointed by a borough council with another council not being a borough council), the clerk of the joint committee shall, after receiving from the auditor the requisite notice of the appointment, give at least fourteen days’ notice of the time and place at which the audit will be commenced, and of the deposit of the accounts required by this section, either by causing notices in the prescribed form to be posted in the prescribed manner, or by advertisement in some one or more of the local newspapers circulated in the district for which the joint committee is appointed. He shall, immediately after such notice is posted or such advertisement is published, as the case may be, forward to the auditor a certificate thereof in the prescribed form, and the production of such certificate or of the newspaper containing the advertisement shall be deemed to be sufficient proof in any proceeding whatsoever of the notice required by this section having been given.

“The term ‘prescribed’ in this section means prescribed by the Local Government Board.”

Report of District Auditor on Accounts of any Joint Committee.

2. In the application of sub-section (10) of section 247 of the Public Health Act, 1875,^(c) to the audit of the accounts of any joint committee as defined by this Order, such sub-section shall be modified so as to read as follows:—

“(10.) Within fourteen days after the completion of the audit, the auditor shall send to the Local Government Board a report on the accounts audited and examined by him. Every joint committee shall, on the completion of the audit, submit to the several authorities by whom they have been appointed at the meeting of such authorities respectively held next after the completion of the audit a copy of the financial statement of the accounts of the joint committee as certified by the district auditor.”

Interpretation.

3. In this order the expression “joint committee” means a joint committee of district councils or of any district council and parish council or parish meeting, inclusive of a joint committee appointed by a borough council with another council not being a borough council.

Given under the Seal of Office of the Local Government Board, this twenty-sixth day of July, in the year one thousand eight hundred and ninety-five.

(L.S.)

HENRY CHAPLIN, *President.*

Hugh Owen, *Secretary.*

(b) *Ante*, p. 326.

(c) *Ante*, p. 328.

Appendix.

ALLOTMENTS.(a)

MODEL REGULATIONS—CIRCULAR.

(30th May, 1888.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W..

30th May, 1888.

SIR—I am directed by the Local Government Board to advert to the power conferred on sanitary authorities by section 6 (1) of the Allotments Act, 1887,(b) of making such regulations as appear to be necessary or proper for regulating the letting of allotments under the Act, for preventing any undue preference in the letting thereof, and generally for carrying the provisions of the Act into effect. With the view of assisting sanitary authorities in the exercise of their powers under this section, the Board have caused a series of model regulations to be prepared on the subject to which it relates. A copy of this series is inclosed herewith, and the Board direct me to state that they will be prepared, on application, to supply to any sanitary authority who propose to make regulations under the Act, copies of the clauses on foolscap paper, with a margin for annotations or alterations.

In the preface to the series the Board have dealt with such points connected either with the enactment authorizing the regulations, or with the clauses themselves, as appeared to them to require notice. It may be convenient, however, to state here the method of procedure which they suggest for adoption by sanitary authorities in submitting regulations for revision and confirmation. Before the regulations are formally made or deposited for the inspection of the ratepayers, a draft of them should in all cases be prepared on one of the foolscap copies above referred to, and forwarded to the Board. If the model clauses require modification to suit the circumstances of the particular case, the proposed variations should be clearly shown in manuscript in the margin of the draft.

When the final revision of the draft has been completed, and the sanitary authority have been informed of the decision of the Board with regard to the several clauses, a fair copy (which may be either in manuscript or in print) embodying the contents of the draft as revised, and carefully compared with the original to ensure the correction of possible errors, should be prepared for deposit at the office of the sanitary authority, and for inspection by the ratepayers.

After the necessary notice of the intention of the sanitary authority to apply for confirmation of the regulations, and after due consideration of any objections made by persons locally interested, the regulations, with the common seal of the urban sanitary authority, or in the case of a rural sanitary authority, of the guardians of the union, properly affixed at a meeting of which the precise date should be notified at the end of the series, should be transmitted to the Board, together with a copy of a newspaper containing the advertisement required by section 184 of the Public Health Act, 1875.(c)

In order that delay in the confirmation of regulations may be avoided, the Board desire to impress upon sanitary authorities the necessity for careful examination, with the original draft, of the fair copy deposited for inspection, and of the regulations finally submitted to the Board. It is also important that the advertisement of the intention of the sanitary authority to apply for confirmation should be so framed as to comply strictly with the provisions of section 184 of the Public Health Act, and care should be taken that the regulations remain deposited for a full calendar month subsequent to the date of the newspaper in which the advertisement appears, and not merely for a month from the date on which the notice is signed.

The Board in their circular letter of 30th November last(d) drew the attention of the sanitary authority to the chief provisions of the Allotments Act, 1887, but they

(a) See also sub tit. "Compulsory Purchase of Land," *post*.(b) *Ante*, p. 1219.(c) *Ante*, p. 257.

(d) See 17th Annual Report of the Local Government Board, App. A., pp. 27 and 37.

may take this opportunity to remind the authority of the important duties which devolve upon them under the Act. Appendix.

When a representation in writing is made to the sanitary authority under section 2 (1) of the Act,^(e) it is their duty to take the representation into consideration, and if they are of opinion, either after inquiry made in consequence of a representation under the section, or otherwise, that there is a demand for allotments for the labouring population, they should ascertain whether such allotments can be obtained at a reasonable rent and on reasonable conditions, by voluntary arrangement between the owners of lands suitable for allotments and the applicants for the same. If such allotments cannot be obtained at the rent and under the conditions above referred to, it is the duty of the sanitary authority, subject to the provisions of the Act, by purchase or hire, to acquire any suitable land which may be available, whether within or without the area in which the allotments are required, adequate to provide a sufficient number of allotments, and immediate steps should be taken for this purpose. The Board believe that it will be found that many landowners, who are unwilling themselves to let land in allotments, will be ready to let it on reasonable terms to the sanitary authority for the purpose of enabling the authority to let the land in allotments. But if the sanitary authority are unable by hiring or by purchase by agreement to acquire suitable land for allotments at a reasonable rent or price, and subject to reasonable conditions, the Board think that, assuming there is suitable land in the locality which could be obtained under compulsory powers of purchase without contravening the conditions laid down in the Act, the sanitary authority should resort to the power conferred on them by section 3 (2) of applying for a provisional order to enable them to acquire such land by compulsory purchase.

The Board trust that the sanitary authorities in their respective districts will endeavour to give full effect to the intentions of the Legislature in passing the Act.

I am, Sir, Your obedient Servant,
HUGH OWEN, *Secretary*.

The Clerk to the
Sanitary Authority.

MODEL REGULATIONS—MEMORANDUM.

(30th May, 1888.)

By section 6 (1) of the Allotments Act, 1887 (50 & 51 Vict. c. 48),^(f) it is enacted that "Subject to the provisions of this Act, the sanitary authority may from time to time make, revoke, and vary such regulations as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for carrying the provisions of this Act into effect; and such regulations may define the persons eligible to be tenants of such allotments, and the notices to be given for the letting thereof, and the size of the allotments, and the conditions under which they are to be cultivated, and the rent to be paid for them. Provided that all such regulations shall make provision for reasonable notice to be given to a tenant of any allotment of the determination of his tenancy. Provided also, that all regulations made under this section shall not be of any force unless and until they have been confirmed by the Local Government Board in like manner and subject to the like provisions as in the case of byelaws under the Public Health Act, 1875."

"Sanitary authority" is defined by section 17 of the Act^(g) as meaning the urban sanitary authority of an urban sanitary district, and the rural sanitary authority of a rural sanitary district within the meaning of the Public Health Act, 1875.

It appears to the Local Government Board that regulations under section 6 can only be made by sanitary authorities as thus defined, and that the power cannot

(e) *Ante*, p. 1216.

(f) *Ante*, p. 1219.

(g) *Ante*, p. 1226.

Appendix. be delegated to allotment managers appointed under section 6 (3) of the Act or elected under section 9. The power of carrying out the regulations, when made, may, however, be delegated by the sanitary authority, to any such managers, where they exist; and the Board have consequently so framed the definition of the expression "the sanitary authority" in the following regulations as to include allotment managers to whom this power has been delegated.

It will be seen that section 6 of the Act gives power to make regulations generally for carrying the provisions of the Act into effect, and under this enactment the Board have thought that a regulation might properly be made dealing with the division of land into allotments. By clause 3 of the suggested series, it is proposed that before the sanitary authority give notice of their intention to let any allotment, they should divide the land acquired under the Act into suitable allotments and should cause a plan to be prepared showing each allotment, and distinguishing it by a separate number. Each allotment must then be entered under its number in the register which the sanitary authority are required to keep in pursuance of section 15 of the Act. The regulation as to the size of the allotments will be found to prescribe a minimum size only. By section 7 (3) of the Act the maximum amount of land, which any one person can hold as an allotment, is fixed at one acre.

Section 6 directs that all regulations under the Act shall make provision for reasonable notice to be given to the tenant of any allotment of the determination of his tenancy, and clause 9 of the proposed regulations will provide for this. As regards the precise number of months' notice to be required, the Board may draw attention to section 33 of the Agricultural Holdings (England) Act, 1883. It will be seen that twelve months' notice, expiring with a year of tenancy, is necessary for the determination of a tenancy to which that section applies.

Section 15 of the Allotments Act^(a) provides that "the sanitary authority shall cause a register to be kept showing the particulars of the tenancy, acreage, and rent of every allotment let, and of the unlet allotments," and that "such register shall be open to the examination of ratepayers in the urban district or the parish for which the allotments have been provided, in such manner as may be prescribed by the regulations made under this Act by the sanitary authority." It is proposed by clause 10 of the regulations to require that the register shall be deposited at the office of the sanitary authority, and that it shall be open during office hours to the examination of any ratepayer in the district or parish.

It will be observed that the model regulations do not contain any clause as to the rent to be paid for an allotment, although power to make a regulation on this subject is conferred by section 6 of the Act. If a sanitary authority should think it desirable to prescribe the rents of their allotments by means of regulations, the Board will be prepared to consider any regulation which the sanitary authority may propose to make on the subject; but it appears to the Board that it would not be practicable to suggest generally what the terms of such a regulation should be. It must be borne in mind, however, that section 7 (1) of the Act requires that the rent of the allotments shall be fixed at an amount not less than such as may reasonably be expected to ensure the sanitary authority from loss: but in calculating such loss any expenses incurred in an unsuccessful attempt to acquire land for allotments are to be excluded. Subject to this, such rents may be from time to time charged as are reasonable, having regard to the agricultural value of the land, and not more than a quarter's rent is to be required to be paid in advance in any case where it is deemed necessary by the sanitary authority to require the payment of rent in advance.

In the last proviso to sub-section (1) of section 6 of the Act, it is enacted that all regulations made under the section shall not be of any force unless and until they have been confirmed by the Board in like manner, and subject to the like provisions, as in the case of bye-laws under the Public Health Act, 1875. The enactments here referred to are those in section 184 of the last-mentioned Act; (b) and the effect of their application to regulations under the Allotments Act is to require that, before application is made to the Board to confirm any regulation, notice of intention to apply for such confirmation shall have been given in one or more local newspapers circulated within the district to which the regulations relate,

(a) *Ante*, p. 1226.

(b) *Ante*, p. 257.

and that for at least a month before such application, a copy of the proposed regulations shall have been kept at the office of the sanitary authority, and shall have been open during office hours thereat to the inspection of the ratepayers of the district to which the regulations relate without fee or reward. No pecuniary penalties can be imposed by the regulations; but section 8 (2) of the Allotments Act(c) provides that if it appears to the sanitary authority that the tenant of an allotment not less than three months after the commencement of his tenancy has not duly observed the regulations affecting such allotment made by or in pursuance of the Act, the sanitary authority may serve upon him, or if he is residing out of the district or parish, they may leave at his last known place of abode in the district or parish, or fix in some conspicuous manner on the allotment, a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon such tenancy shall be determined accordingly.

Appendix.

HUGH OWEN, *Secretary.*

Local Government Board,
30th May, 1888.

MODEL REGULATIONS AS TO ALLOTMENTS.

(30th May, 1888.)

REGULATIONS MADE BY THE¹ AS THE² SANITARY AUTHORITY FOR
THE DISTRICT OF³ WITH RESPECT TO ALLOTMENTS FOR THE⁴.

Interpretation of terms.

1. Throughout these regulations the expression "the sanitary authority" means the¹ as the² sanitary authority, or, if and so long as there are allotment managers who are empowered to carry out these regulations, such managers; the expression "the district" means the² sanitary district of³, and the expression "the parish" means⁵.

For defining the persons eligible to be tenants of the Allotments.

2. Any man or woman, of not less than twenty-one years of age, who at the time of application to the sanitary authority for an allotment has been resident in the⁶ for not less than months, and belongs to the labouring population, shall be eligible to become a tenant of an allotment.

Provided always that a person who, at the time of such application, already holds an allotment, either from the sanitary authority or otherwise, shall not be eligible to become tenant of an allotment, the area of which together with the area of any allotment or allotments already held by him would amount to more than .

As to dividing the land into Allotments.

3. The sanitary authority, before giving notice of their intention to let any allotment, shall divide the land, and shall cause a plan to be prepared, showing each allotment, and distinguishing it by a separate number. They shall enter each allotment under its number in the register required to be kept, showing the particulars of the tenancy, acreage, and rent of every allotment.

(c) *Ante*, p. 1221.

¹ "Mayor, Aldermen, and Burgesses of the Borough of , acting by the Council"; or, "Improvement Commissioners for the District of , acting"; or "Local Board for the District of , acting"; or "Guardians of the Poor of the Union, acting," as the case may be.

² Insert "urban" or "rural."

³ Insert the name of the district.

⁴ Insert "said district" or "parish of " as the case may be.

⁵ If, in a Rural Sanitary District, the allotments are provided for a contributory place which is not co-extensive with a poor law parish, the area should be described by the name of the contributory place.

⁶ Insert "district" or "parish."

Appendix. The sanitary authority may from time to time re-divide any portion of the land. They shall enter and number each allotment formed on such re-division in the register, in the manner hereinbefore prescribed.

For defining the notices to be given for the letting of the Allotments.

4. The sanitary authority shall give public notice, by bills or placards posted in some conspicuous places in the¹ or otherwise exhibited therein, setting forth the particulars as to any allotments which they propose to let.
- Such notice shall specify the allotments to be let and the size thereof, the rent to be paid for the same, the place to which, and the name of the person to whom application for the hiring of any allotment is to be sent, and the last day for receiving any such application.

For defining the size of the Allotments.

5. The size of any allotment let by the sanitary authority shall not be less than² poles.

For regulating the letting of the Allotments and preventing any undue preference in the letting thereof.

6. The sanitary authority shall not let any allotment unless and until notice that they propose to let the same has been duly given in pursuance of the regulation in that behalf at least³ weeks before the last day for receiving applications to hire such allotment.
- Every person who shall apply for an allotment shall furnish in the form hereto appended a true statement of the particulars therein required to be specified and shall send or deliver the same to the clerk to the⁴, and it shall be the duty of such clerk to number the applications in the order in which they are received.
- In letting an allotment for which there are two or more applicants eligible to become tenants, the sanitary authority shall select the applicant who appears most likely to keep the allotment in a proper state of cultivation; but in cases of equality in this respect the sanitary authority shall give preference to the applicants according to the order in which their applications are numbered as having been received.

FORM OF APPLICATION FOR ALLOTMENTS.

To the	Sanitary Authority for the District of	, or
To the allotment managers for the	of	
I the undersigned hereby make application for No. of the allotments provided for the District [or Parish of].		
1. Name	- - - - -	-
2. Residence	- - - - -	-
3. Age	- - - - -	-
4. Occupation	- - - - -	-
5. How long resident in the district [or parish]	- - - - -	-
6. Whether holding any allotment, and if so—		
(a.) From whom	- - - - -	-
(b.) Extent of allotment	- - - - -	-
Signature	- - - - -	-
Date	- - - - -	-

7. When the sanitary authority have decided to let any allotment or allotments to any person, an agreement shall be made between the sanitary authority and such person, and shall be signed by the clerk to the⁴ on behalf of the sanitary authority and by such person. The agreement shall be in the form hereinafter prescribed, or to the like effect.

¹ Insert "district" or "parish."
² It is suggested that "twenty" should be inserted here.
³ "Two" might be inserted.
⁴ Insert the name of the Urban or Rural Sanitary Authority of the District.

FORM OF AGREEMENT FOR LETTING.

Appendix.

Agreement made this day of , 18 , between the
(hereinafter called the sanitary authority) of the one part, and of
(hereinafter called the tenant) of the other part, whereby the said sanitary
authority agree to let, and the said tenant agrees to hire the allotment [or
allotments] numbered in the register of allotments provided for the
district [or parish of], and containing or thereabouts, at the
yearly rent of , and at a proportionate rent for any period of less
than a year over which the tenancy may extend, subject to the following
conditions:—

(a.) The rent shall be paid* on the day of , ^{* Insert in ad-}
the day of , the day of and the day ^{vance, if this is}
of in each year. ^{intended.}

(b.) Any member or officer of the sanitary authority shall be entitled at
any time when directed by the sanitary authority to enter and inspect the
allotment.

(c.) The tenancy, if not sooner terminated by the sanitary authority in
pursuance of the Allotments Act, 1887, or of any regulations made thereunder,
shall terminate on the death of the tenant, or after months' notice in
writing given by the tenant, such notice to expire on the or .

Signed

Clerk to the

Witness

Signed

Tenant.

Witness

For defining the conditions under which the Allotments are to be cultivated.

8. Every person to whom an allotment may have been let shall cultivate such
allotment according to the following conditions, that is to say :

He shall keep the allotment free from weeds, and well manured, and otherwise
maintain it in a proper state of cultivation ;

He shall not plant any trees or shrubs so as to be injurious to any adjacent
allotment ;

He shall keep every hedge that shall form part of the allotment properly cut and
trimmed ;

He shall not cause any nuisance or annoyance to the tenant of any other allot-
ment.

*As to the reasonable notice to be given to a tenant of any Allotment of the determination
of his tenancy.*

9. The sanitary authority shall give to the tenant of any allotment not less
than months' notice of the determination of his tenancy, such notice to
take effect on or .

Provided always that this regulation shall not apply in the case of the deter-
mination of a tenancy in pursuance of the statutory provision in that behalf,
where the rent is in arrear for not less than forty days, or where it appears to the
sanitary authority that the tenant of an allotment, not less than three months after
the commencement of the tenancy thereof, has not duly observed the regulations
affecting such allotment, or is resident more than one mile out of the⁵ .

*For prescribing the manner in which the Register of Allotments shall be open to the
examination of ratepayers.*

10. The register showing the particulars of the tenancy, acreage, and rent of
every allotment let, and of the unlet allotments, shall be deposited at the office of
the , and shall be open during office hours to the examination of any rate-
payer in the⁵ .

⁵ Insert "district" or "parish."

Appendix.

ALTERATION OF AREAS.

INQUIRIES AND NOTICES UNDER SECTION 57 OF LOCAL
GOVERNMENT ACT, 1888—CIRCULAR.

(17th September, 1889.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

17th September, 1889.

SIR,—I am directed by the Local Government Board to forward to you, for the information of the county council of _____, the enclosed copies of an Order which they have issued under sections 57 and 87 of the Local Government Act, 1888, prescribing regulations with respect to the inquiries to be made and the notices to be given for the purposes of the first mentioned section.

I am, Sir, your obedient servant,

HUGH OWEN, *Secretary*.

To

*The Clerk to the County Council.*INQUIRIES AND NOTICES UNDER SECTION 57 OF THE LOCAL
GOVERNMENT ACT, 1888—REGULATIONS.

(14th September, 1889.)

To THE COUNTY COUNCILS for the several Administrative Counties in
England and Wales;—

And to all others whom it may concern.

WHEREAS by sub-sections (1), (2), and (3) of section 57 of the Local Government Act, 1888, (a) it is enacted as follows:—

“57.—(1.) Whenever a county council is satisfied that a *prima facie* case is made out as respects any county district not a borough, or as respects any parish, for a proposal for all or any of the following things; that is to say,—

“(a) the alteration or definition of the boundary thereof;

“(b) the division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish;

“(c) the conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts;

“(d) the division of an urban district into wards; and

“(e) the alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,

the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government department as may be prescribed and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

“(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the

members among the wards shall come into operation upon being finally approved by the county council. Appendix.

“(3.) In any other case the order shall be submitted to the Local Government Board; and if within three months after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.”

And whereas by sub-section (4) of section 87 of the said Act (*b*) it is enacted that

“Where any matter is authorised or required by this Act to be prescribed, and no other provision is made, declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.”

And whereas in regard to the matters required by the said section 57 to be prescribed no provision other than that contained in the said section 87 is made, declaring how such matters are to be prescribed:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, and until we shall otherwise direct, prescribe and determine as follows, with respect to the inquiries to be made and the notices to be given for the purposes of the said section 57 of the Local Government Act, 1888, the manner of giving such notices, and the several other matters to be prescribed and determined for the purposes of the said section; that is to say,—

ARTICLE I.—(1.) Prior to any Order being made by a county council in regard to a proposal for all or any of the things specified in sub-section (1) of section 57 of the Local Government Act, 1888, a local inquiry, at which all persons interested may attend and be heard, shall be held in regard to the proposal as the council may direct, either by a committee of the county council, or by some person appointed by the county council to hold such inquiry.

(2.) If the proposal relate to one or more county districts, the said inquiry shall be held at some convenient place in such district or in one of such districts; and if the proposal relate to a parish or parishes, the said inquiry shall be held either in such parish or in one of such parishes, or at such place in the neighbourhood as may, in the opinion of the committee or person by whom the inquiry is to be held, be most convenient for the purpose.

(3.) Before the day when the inquiry is to be held, public notice of the purport of the proposal, and of the day, time, and place fixed for the inquiry in regard to it, shall be given by the county council by advertisement in two successive weeks in some local newspaper circulating in the locality to which the proposal relates.

ARTICLE II.—At least fourteen days before the day when the inquiry is to be held, a printed notice of the purport of the proposal, and of the day, time, and place for the inquiry shall also be published in the manner hereinafter described, and shall be sent to the several government departments and local or other authorities hereinafter specified; that is to say,—

- (1.) A copy of the said notice shall be posted as a bill or placard in such places in the county district or districts or parish or parishes interested in the proposal as are ordinarily made use of for posting public or parochial notices.
- (2.) In any case where the proposal relates to the alteration of or other dealing with any sanitary district, a copy of the notice shall be sent by the county council to the sanitary authority of such district.
- (3.) In any case where the proposal relates to the alteration of or other dealing with any parish a copy of the notice shall be sent by the county council to the overseers of the poor of such parish; to the guardians of the poor of the union in which such parish is comprised; to the school board (if any) for such parish or for any part thereof; to the highway authority

Appendix.

- or authorities of the parish; to the burial board (if any) for such parish or for any part thereof; and to the urban sanitary authority (if any) in whose district such parish or any part thereof is comprised.
- (4.) A copy of the notice shall be sent by the county council to any local authority which, in the opinion of the county council, is specially interested in the proposal.
- (5.) A copy of every such notice shall be sent by the county council to the Local Government Board; and in any case where the proposal relates to all or any of the things mentioned in paragraphs (a), (b), and (c) of sub-section (1) of section 57 of the said Act, a copy of the notice shall be sent by the County Council to the Public Works Loan Commissioners, the Director General of the Ordnance Survey at Southampton, and to the Registrar General; and in any case where the proposal relates to the alteration or definition of the boundary of any parish a copy of the notice shall be sent to the Education Department.

ARTICLE III.—Public notice of the provisions of any Order made by a county council under sub-section (1) of section 57 of the said Act shall be given by the county council by advertisement in two successive weeks in some local newspaper circulating in each district or parish affected by the Order; and the first of such advertisements shall be published within fourteen days after the making of the Order.

The said advertisement shall contain either a copy of the Order or a statement of the effect of the Order, and shall also contain a statement of the time and place or places during and at which copies of the Order may be inspected by any owner or ratepayer in any area affected by the Order during a period of one month from the date of the first publication of such advertisement, and the Order shall be open for such inspection during such period.

ARTICLE IV.—A copy of any Order made as aforesaid by a county council shall, at any time while copies of the Order are open to inspection as aforesaid, and, in the case of an Order which requires to be confirmed by the Local Government Board, at any time before the confirmation of the Order by the Local Government Board, be supplied by the clerk to the council to any owner or ratepayer in any area affected by the Order, upon payment by such owner or ratepayer of a sum not exceeding threepence for each hundred words of manuscript if the copy of the Order be in writing, or upon payment of a sum not exceeding threepence for a printed copy of the Order.

ARTICLE V.—On or before the date of the first publication of the advertisement in pursuance of Article III. hereof of the provisions of any Order made as aforesaid, and, in the case of any such Order which does not require to be confirmed by the Local Government Board, one month at least before the Order is finally approved by the county council under the said sub-section (2) of section 57 of the said Act, three copies of the Order shall be forwarded to the Local Government Board and to each of the other Government Departments to whom a copy of the notice of the inquiry relative to the proposed Order was, by Article II. of this Order, required to be sent; a copy of the Order shall also be sent to each of the local or other authorities to whom a copy of such notice was so required to be sent, and a copy shall also be posted in like manner as the notice of the inquiry was, in pursuance of the same Article, required to be posted.

ARTICLE VI.—The first advertisement in pursuance of Article III. hereof of the provisions of any order made by a county council under the said sub-section (1) of section 57 of the said Act shall be deemed to be the “first notice” for the purposes of sub-section (3) of that section.

ARTICLE VII.—The expression “county council” in this Order shall include a joint committee appointed under section 81 of the said Act by any county councils of administrative counties for the purpose of dealing under section 57 of the said Act with a matter in which such councils are jointly interested.

Given under the Seal of Office of the Local Government Board, this
fourteenth day of September, in the year one thousand eight
hundred and eighty-nine.

(L.S.)

CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

CANAL BOATS.

REGISTRATION, ETC. OF CANAL BOATS—GENERAL ORDER.

(20th March, 1878.)

TO THE SEVERAL REGISTRATION AUTHORITIES under the Canal Boats Act, 1877;—

And to all others whom it may concern.

WHEREAS by section 2 and section 9 of “The Canal Boats Act, 1877,”(a) it is enacted as follows:—

(Section 2.)

“The Local Government Board shall make regulations, and may from time to time revoke and vary such regulations—

“(1.) For the registration of canal boats under this Act, including certificates of registration and the fees in connexion with such registration; and

“(2.) For the lettering, marking, and numbering of such boats; and

“(3.) For fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat; and

“(4.) For promoting cleanliness in and providing for the habitable condition of canal boats; and

“(5.) For preventing the spread of infectious disease by canal boats.

“The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.”

(Section 9.)

“An order of the Local Government Board making, revoking, or varying any regulation in pursuance of this Act shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament.”

Now therefore, We, the Local Government Board, in pursuance of the powers given by the statutes in that behalf, hereby order that on the thirtieth day of June, one thousand eight hundred and seventy-eight, the following regulations shall come into force, and shall thenceforth continue in force until revoked or varied:—

I.—*For the Registration of Canal Boats under the Canal Boats Act, 1877, including Certificates of Registration, and the Fees in connexion with such Registration.*

1. Every owner of a canal boat who may desire to register the boat as a dwelling shall apply to a registration authority(b) having a district abutting on the canal on which the boat is accustomed or intended to ply. Application for registration.

The owner in making such application shall inform the registration authority of a time and place at which the boat may be examined with a view to registration; and shall also furnish such other information as the registration authority may require in relation thereto.

2. Every registration authority shall, from time to time, appoint or employ a fit and proper person to examine and report upon the several canal boats the owners whereof may, in pursuance of the regulation in that behalf, have made application to the authority for registration, and may pay him a reasonable remuneration for such examination and report. Appointment of, and examination and report by officer of Registration Authority.

Every person so appointed or employed shall ascertain and duly record with

(a) *Ante*, pp. 1073, 1075.

(b) See 40 & 41 Vict. c. 60, s. 7, *ante*, p. 1075.

Appendix.Registration
of boat.

respect to the boat and the cabin or cabins thereof the several particulars requisite to enable him to furnish the information to be set forth in a report which shall be in the Form A. in the schedule to these regulations, and shall be submitted to the registration authority at their next ordinary meeting, or at a special meeting to be called for the purpose.

3. The following conditions shall be complied with before a canal boat is registered; that is to say,—

- a. The boat shall contain a cabin or cabins, clean, in good repair, and so constructed as to be capable of being maintained at all times weatherproof, dry, and clean.
- b. The interior of any after cabin intended to be used as a dwelling shall contain not less than 180 cubic feet of free air space, and the interior of any fore cabin, if intended to be so used, shall contain not less than 80 cubic feet of free air space.
- c. Every cabin, if intended to be used as a dwelling, shall be provided with sufficient means for the removal of foul, and the admission of fresh air, exclusive of the door or doors and of any opening therein.
- d. Every cabin, if intended to be used as a dwelling, shall be so constructed or fitted as to provide adequate and convenient sleeping accommodation for the persons allowed by these regulations to dwell in the boat.
- e. If the boat be a "narrow" boat, every cabin intended to be used as a dwelling shall be so constructed or fitted that there shall be no locker or cupboard obstructing the free passage from the door to the bulkhead, and no shut-up cupboard above the cross-bed on more than one side of the cabin.
- f. One cabin at the least in the boat shall be furnished with a suitable stove and chimney in a safe and convenient situation, and in all other respects sufficient for the reasonable requirements of the persons allowed by these regulations to dwell in the boat.
- g. The boat shall be properly furnished or fitted with lockers, cupboards, and shelves of suitable construction and adequate capacity, and in all other respects sufficient for the reasonable requirements of the persons allowed by these regulations to dwell in the boat.
- h. The boat, if intended to be ordinarily used for the conveyance of any foul or offensive cargo, shall contain, between the space to be occupied by such cargo and the interior of any cabin intended to be used as a dwelling, two bulkheads of substantial construction, which shall be separated by a space not less in any part than four inches, and open throughout to the external air, and furnished with a pump for the removal of any liquid from such space, and the one next adjoining the space to be occupied by the cargo shall be water-tight.
- i. The boat shall be furnished with a suitable cask or other appropriate vessel or receptacle of sufficient capacity for the storage of not less than three gallons of water for drinking.

In every case where the conditions hereinbefore prescribed have been complied with, the registration authority shall cause the boat to be registered, in a book in the Form B. in the schedule to these regulations, as a dwelling for the number of persons allowed by the said regulations to dwell therein.

Notice of change
of master.

4. The owner of a canal boat which may have been registered as a dwelling shall, from time to time, on every new appointment of a master, notify in writing to the registration authority the christian name and surname of the master newly appointed.

Certificates of
registration.

5. Each of the two certificates of registration which, in pursuance of the provisions of section 3 of the Canal Boats Act, 1877, the registration authority, upon registry of a canal boat under that Act, shall give to the owner of the boat, shall, in addition to such other particulars as may seem fit to the authority, contain the several particulars set forth in the Form C. in the schedule to these regulations.

Fees in con-
nexion with
registration.

6. Every owner of a canal boat applying for registration shall, before the delivery of the certificates, pay to the registration authority the sum of five shillings, as a fee in connexion with the registration of the boat.(a)

(a) As to the application of this fee, see 40 & 41 Vict. c. 60, s. 11, *ante*, p. 1076.

II.—*For the Lettering, Marking, and Numbering of Registered Boats.*(b)

Appendix.

7. Every owner of a canal boat registered as a dwelling shall forthwith, upon the receipt of the certificates of registration from the registration authority, cause such boat to be lettered, marked, and numbered in accordance with the following rules; that is to say,—

- a. The word “registered,” the name of the place to which the boat has been registered as belonging, the registered number of the boat, and such distinctive mark or marks as may be required by the registration authority, and may be specified in the certificates of registration, shall be painted white on a black ground in a conspicuous position on the outside of one of the cabins of the boat.
- b. The name of the place to which the boat has been registered as belonging, and the registered number of the boat, shall be painted in Roman capital letters and figures, not less than two inches in height.

III.—*For fixing the number, age, and sex of the persons who may be allowed to dwell in a Canal Boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat.*

8. For the purpose of fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, which conforms to the conditions of registration provided by these regulations, and which shall, in pursuance of the statutory provision in that behalf, have been registered as a dwelling, the following rules shall apply:—

- a. Subject to the conditions hereinafter prescribed with respect to the separation of the sexes, the number of persons who may be allowed to dwell in the boat shall be such that in the cabin or cabins of the boat there shall be not less than 60 cubic feet of free air space for each person above the age of 12 years, and not less than 40 cubic feet of free air space for each child under the age of 12 years:

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, the free air space for each child under the age of 12 years shall be deemed sufficient if it is not less than 30 cubic feet.

Provided also, that in the case of a boat registered as a “fly” boat, and worked, by shifts, by four persons above the age of 12 years, there shall be not less than 180 cubic feet of free air space in any cabin occupied as a sleeping place by any two of such persons at one and the same time.

- b. A cabin occupied as a sleeping place by a husband and wife shall not at any time while in such occupation be occupied as a sleeping place by any other person of the female sex above the age of 12 years, or by any other person of the male sex above the age of 14 years:

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, a cabin occupied as a sleeping place by a husband and wife may be occupied by one other person of the male sex above the age of 14 years, subject to the following conditions:—

- i. That the cabin be not occupied as a sleeping place by any other person than those above-mentioned;
- ii. That the part of the cabin which may be used as a sleeping place by the husband and wife shall, at all times while in actual use, be effectually separated from the part used as a sleeping place by the other occupant of the cabin, by means of a sliding or otherwise moveable screen or partition of wood or other solid material, so constructed or placed as to provide for efficient ventilation.

(b) See 40 & 41 Vict. c. 60, s. 3, *ante*, p. 1074, and 47 & 48 Vict. c. 75, s. 7, *ante*, p. 1201.

Appendix.

c. A cabin occupied as a sleeping place by a person of the male sex above the age of 14 years shall not, at any time, be occupied as a sleeping place by a person of the female sex above the age of 12 years, unless she be the wife of the male occupant, or of one of the male occupants in any case within the proviso to Rule b.

IV.—*For promoting cleanliness in and providing for the habitable condition of Canal Boats.*

Renewal of paint.

9. The owner of a canal boat which may have been registered as a dwelling shall, once at least in every three years, cause the paint on every surface in the interior of every cabin which may be used as a dwelling to be thoroughly renewed.

Removal of bilge water.

10. The master of a canal boat which may have been registered as a dwelling shall cause all bilge water to be removed therefrom by pumping as often as may be necessary to prevent any collection of such water beneath the floor of any cabin which may be used as a dwelling, and, in any case, not less frequently than once in every 24 hours.

Cabins to be kept cleanly and habitable.

11. The master of a canal boat which may have been registered as a dwelling shall cause every cabin which may be used as a dwelling to be kept at all times in a cleanly and habitable condition.

V.—*For preventing the spread of Infectious Disease by Canal Boats.*(a)

Notification of infectious disease.

12. In every case where a person on a canal boat is seriously ill or is evidently suffering from an infectious disease, the master of the boat, if, at the time, the boat is proceeding on a journey, shall, as soon as may be practicable, give information thereof to the sanitary authority within whose district is situate the canal or the part of the canal along which the boat may at the time be passing, and, on the arrival of the boat at its port or place of destination, to the sanitary authority within whose district such port or place is situate, and also to the owner of the boat.

If at the time the boat be at its port or place of destination, the master shall forthwith inform the sanitary authority within whose district such port or place is situate, and also the owner of the boat, that a person on board the boat is seriously ill or is evidently suffering from an infectious disease.

The owner of the boat shall forthwith, upon the receipt from the master of information to the effect that a person on board the boat is or has been suffering from an infectious disease, give notice to that effect to the sanitary authority having jurisdiction in the place to which the boat may have been registered as belonging.

Certificate of cleansing and disinfection.

13. In every case where, in the exercise of the power conferred by section 4 of the Canal Boats Act, 1877,(b) a sanitary authority may have detained a canal boat for the cleansing and disinfection thereof, the authority, before allowing the boat to proceed on its journey, shall obtain from their medical officer of health, or from some other legally qualified practitioner, a certificate to the effect that the boat has been duly cleansed and disinfected, and shall cause such certificate to be delivered to the master of the boat. The sanitary authority may pay a reasonable remuneration for any such certificate.

VI.—*Interpretation of Terms.*

14. In these regulations, unless the context otherwise requires, words have the same meaning as in the Canal Boats Act, 1877.(c)

The expression " wide boat " means a boat not less than seven feet six inches beam :

The expression " narrow boat " means a boat of less than seven feet six inches beam.

(a) See 40 & 41 Vict. c. 60, s. 4, *ante*, p. 1074.

(b) *Ante*, p. 1074.

(c) See 40 & 41 Vict. c. 60, s. 14, *ante*, p. 1076.

SCHEDULE.

FORM A.

Examining Officer's Report on Canal Boats.

1. Time and place of examination of Canal Boat
2. Name, or, if there be no name, the number of the Canal Boat examined
3. Christian name, Surname, and address of Owner*
4. Christian name and Surname of Master
5. Route along which the boat is accustomed or intended to ply
6. Nature of the traffic in which the boat is accustomed or intended to be employed
7. Mode of propulsion;
and whether a "Wide" or "Narrow" boat;
and whether to be used as a "Fly" boat worked by shifts.
8. Number of Cabins in the boat
9. Dimensions and cubical capacity of the cabin or cabins:—
Rule of measurement and of deduction adopted:—†

ft. in.

After Cabin..	Height
	Length
	Width
	Gross cubical capacity..
	Net cubical capacity or } free air space..... }
Fore Cabin..	Height
	Length
	Width
	Gross cubical capacity..
	Net cubical capacity or } free air space..... }

10. Description of the construction, furniture, and fittings of the boat, and the several cabins thereof, as regards the following details; viz.—

- a. Whether each cabin is clean, in good repair, weatherproof, and capable of being kept dry and clean.
- b. What means are provided in each cabin for the removal of foul, and the admission of fresh air, exclusive of the door or doors and of any opening therein.
- c. What provision is made in respect of lockers, cupboards, and shelves in the boat.
- d. What provision is made for sleeping accommodation in each cabin.
- e. If the boat be a "narrow" boat;—whether every cabin intended to be used as a dwelling is so constructed or fitted that there shall be no locker or cupboard obstructing the free passage from the door to the bulkhead, and no shut-up cupboard above the cross-bed on more than one side of the cabin.
- f. Whether each or either cabin contains a stove and chimney of suitable construction and situation.
- g. If the boat be intended to be used for the conveyance of any foul or offensive cargo;—whether there are, between the space to be occupied by such cargo, and the interior of each cabin intended to be used as a dwelling, two bulkheads of substantial construction, of which that one next adjoining the space to be occupied by the cargo shall be water-tight, and which shall be separated by a space not less in any part than four inches, and open throughout to the external air, and furnished with a pump for the removal of any liquid from such space.

Appendix.

h. Whether the boat is furnished with a suitable cask or other appropriate vessel or receptacle of sufficient capacity for the storage of not less than three gallons of water for drinking.

General Observations as to the Fitness of the Boat for Registration as a Dwelling.

Dated this day of 18 .

———, *Examining Officer.*

* If the boat is owned by a partnership firm, or by a company or association, corporate or unincorporate, state the name of the firm, company, or association, and their principal office or place of business.

† Here state which of the following Rules has been adopted in determining the internal dimensions and cubical capacity of the cabin or cabins;—distinguishing, in each case, where necessary, the rate of deduction.

RULE A. (for “Wide” Boats).

Measure :—

- The height from the floor to the roof in the middle of the cabin.
- The length from the bulkhead to the door of the opposite cupboard.
- The width across the cabin at the bulkhead.

The product of the height, length, and width thus measured will represent, for the purpose of this Rule, both the gross and the net cubical capacity of free air space.

RULE B. (for “Narrow” Boats).

Measure :—

- The height from the floor to the roof in the middle of the cabin.
- The length from the bulkhead to the end of the cabin at the side of the doorway.
- The greatest width from side to side of the boat at the bulkhead.

The product of the height, length, and greatest width thus measured will represent the gross cubical capacity of the cabin.

To obtain the net cubical capacity or free air space of the cabin, deduction from the gross cubical capacity should be made in accordance with the following directions:—

1. If the cabin have only the following shut-up cupboards or lockers, viz.: a table cupboard, a side bed-locker or cupboard, a cross bed-locker or lockers, and a cupboard above the cross-bed,—
 - (a.) If the height of the cabin be not less than five feet, deduct $\frac{1}{3}$ th.
 - (b.) If the height of the cabin be less than five feet, deduct .. $\frac{1}{4}$ th.
2. If the cabin have only the following shut-up cupboards or lockers, viz.: a table cupboard, a cross bed-locker or lockers, and a cupboard above the cross-bed,—
 - (a.) If the height of the cabin be not less than five feet, deduct $\frac{1}{3}$ th.
 - (b.) If the height of the cabin be less than five feet, deduct .. $\frac{1}{3}$ th.
3. If the cabin have only the following shut-up cupboards or lockers, viz.: a table cupboard and a cupboard above the cross-bed,—
 - (a.) If the height of the cabin be not less than five feet, deduct $\frac{1}{10}$ th.
 - (b.) If the height of the cabin be less than five feet, deduct .. $\frac{1}{12}$ th.

FORM B.

Register of Canal Boats.

——— *Registration Authority.*

1. Registration Number of the boat.....
2. Name of the boat, or, if there be no name, the number ..
3. Christian name, surname, and address of Owner*
4. Christian name and Surname of Master.....
5. Route along which the boat is accustomed or intended to ply
6. Nature of the traffic in which the boat is accustomed or intended to be employed.....

Appendix.

7. Mode of propulsion ;
and whether a "Wide" or "Narrow" boat ;
and whether to be used as a "Fly" boat worked by shifts.
8. Number of cabins in the boat
9. Dimensions and cubical capacity of the cabin or cabins :—
Rule of measurement and of deduction adopted :—†

ft. in.

After Cabin..	Height
	Length
	Width
	Gross cubical capacity..
	Net cubical capacity or free air space..... }
Fore Cabin..	Height
	Length
	Width
	Gross cubical capacity..
	Net cubical capacity or free air space..... }

10. Date of application for Registration
11. Date of examination by Officer of Authority
12. Date of Registration
13. Place to which the boat is registered as belonging, for the purposes of the Elementary Education Acts
- (This must be some place which is either a School District or is part of a School District, and is situate wholly or partly within the jurisdiction of the Registration Authority: See 40 and 41 Viet. c. 60, s. 7.)

14. Maximum number of persons for which the boat is registered, subject to the conditions prescribed with regard to the separation of the sexes

[Note.—In the case of a boat built after the 30th of June, 1878, three children under the age of 12 years may be reckoned, as regards the minimum of free air space, as equivalent to two persons above the age of 12 years. In the case of a boat built prior to the 30th of June, 1878, two children under the age of 12 years may be reckoned as equivalent to one person above the age of 12 years: See Art. 8 a. of the Order.]

As a "Fly" boat worked by shifts	} persons.
Otherwise than as a "Fly" boat—	
In After Cabin	persons.
In Fore Cabin	persons.

15. Observations
16. Initials of Clerk or Chairman of Sanitary Authority acting as the Registration Authority

* If the boat is owned by a partnership firm, or by a company or association, corporate or unincorporate, state the name of the firm, company, or association, and their principal office or place of business.

† Here state whether Rule A. or Rule B. [See Note to the Form A. of Examining Officer's Report] has been adopted in the measurement of the cabin or cabins ;—distinguishing in each case, where necessary, the rate of deduction.

FORM C.

Certificate of Registration of a Canal Boat under the Canal Boats Act, 1877.

Registration Number of Boat.

— Registration Authority.

Whereas application has been made to us, the* acting as the Registration Authority under the Canal Boats Act, 1877, to register as a dwelling a canal boat, of which†, of is the owner, and which is accustomed or intended to ply [as a fly boat worked by shifts] on the canal whereon the said district abuts;

And whereas we have ascertained that the said boat conforms to the conditions of registration provided by the regulations of the Local Govern-

Appendix. ment Board for the number of persons allowed by the said regulations to dwell therein :

Now we, the said* , acting as the Registration Authority, do hereby certify as follows; that is to say,—

1. That the boat named§ , whereof† , of , is the owner, has been duly registered as a dwelling;

2. That the place to which the said boat has been registered as belonging, for the purposes of the Elementary Education Acts is ;

3. That the number with which, in pursuance of the statutory provision in that behalf, the said boat is required to be numbered is ;

4. That the distinctive mark or marks with which we require the said boat to be marked is or are ;

5. That in accordance with the provisions contained in the subjoined Article of an Order of the Local Government Board dated the twentieth day of March, one thousand eight hundred and seventy-eight, the maximum number of persons for which the said boat is registered as a dwelling is as follows :

As a Fly Boat worked by shifts - Persons.

Otherwise than as a Fly Boat—

In After Cabin - - - Persons.

In Fore Cabin - - - Persons.

The Article above referred to is as follows :—

For the purpose of fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, which conforms to the conditions of registration provided by these regulations, and which shall, in pursuance of the statutory provision in that behalf, have been registered as a dwelling, the following rules shall apply :—

a. Subject to the conditions hereinafter prescribed with respect to the separation of the sexes, the number of persons who may be allowed to dwell in the boat shall be such that in the cabin or cabins of the boat there shall be not less than 60 cubic feet of free air space for each person above the age of 12 years, and not less than 40 cubic feet of free air space for each child under the age of 12 years :

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, the free air space for each child under the age of 12 years shall be deemed sufficient if it is not less than 30 cubic feet.

Provided also, that in the case of a boat registered as a “fly” boat, and worked, by shifts, by four persons above the age of 12 years, there shall be not less than 180 cubic feet of free air space in any cabin occupied as a sleeping place by any two of such persons at one and the same time.

b. A cabin occupied as a sleeping place by a husband and wife shall not, at any time while in such occupation, be occupied as a sleeping place by any other person of the female sex above the age of 12 years, or by any other person of the male sex above the age of 14 years :

Provided that in the case of a boat built prior to the thirtieth day of June, one thousand eight hundred and seventy-eight, a cabin occupied as a sleeping place by a husband and wife may be occupied by one other person of the male sex above the age of 14 years, subject to the following conditions :

i. That the cabin be not occupied as a sleeping place by any other person than those above mentioned :

ii. That the part of the cabin which may be used as a sleeping place by the husband and wife shall, at all times while in actual use, be effectually separated from the part used as a sleeping place by the other occupant of the cabin by means of a sliding or otherwise moveable screen or partition of wood or other solid material, so constructed or placed as to provide for efficient ventilation.

c. A cabin occupied as a sleeping place by a person of the male sex above the age of 14 years shall not, at any time, be occupied as a sleeping place by a person of the female sex above the age of 12 years, unless she be the wife

of the male occupant, or of one of the male occupants in any case within the proviso to Rule *b*. Appendix.

Given at ** under the common seal of the acting as the
Registration Authority, this day of , in the year one
thousand eight hundred and .
_____ Clerk to the _____.

* Here insert the description of the sanitary authority and the name of their district.

† If the boat is owned by a partnership firm, or by a company or association, corporate or unincorporate, state the name of the firm, company, or association, and their principal office or place of business.

‡ If it is not a fly boat, strike out these words.

Or "numbered," if the boat be not named.

*** Or where the authority have no common seal, substitute "under the hand of three members of the _____."

Given under the Seal of Office of the Local Government Board, this
twentieth day of March, in the year one thousand eight hundred
and seventy-eight.

(L.S.)

G. SCLATER-BOOTH, *President.*

THOS. SALT, *Secretary.*

CHOLERA.(a)

CHOLERA REGULATIONS—CIRCULAR.

(30th August, 1890.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
30th August, 1890.

SIR,—I am directed by the Local Government Board to advert to section 130 of the Public Health Act, 1875, (b) under which they are empowered to make regulations with a view to the treatment of persons affected with cholera, and preventing the spread of the disease both on land and water.

Doubts having arisen as to the extent of the powers conferred on the Board by this section as respects authorities and vessels, it was provided by the Public Health Act, 1889 (52 & 53 Vict. c. 64), (c) that regulations made by the Board in relation to cholera in pursuance of the enactment above mentioned might provide for such regulations being enforced and executed by the officers of Customs as well as by other authorities and officers, and for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels.

Under these circumstances the Board have thought it desirable to rescind the several Orders previously issued by them with a view to the treatment of persons affected with cholera, and preventing the spread of the disease, and to prescribe fresh regulations on the subject. Copies of the new Order are enclosed. It has been so framed as to apply to every port sanitary authority as well as to every urban or rural sanitary authority whose district includes or abuts on any part of a Customs port, which part is not within the jurisdiction of a port sanitary authority. The necessity for issuing special Orders in certain exceptional cases has thus been obviated.

(a) See also *sub tit.* "Diseases and Hospitals" and "Officers," *post.*

(b) *Ante*, p. 147.

(c) *Ante*, p. 534.

Appendix. In the main the regulations prescribed by the new Order are the same as those previously in force, and the only points to which it appears requisite to draw attention are the following :—

Under Article 6 of the Order it is the duty of every port sanitary authority and of every other sanitary authority within whose district persons are likely to be landed from any ship coming foreign, to fix some place where any ship certified to be infected with cholera may be moored or anchored. A proviso has been added to the Article to the effect that where, in pursuance of any of the Orders now revoked, places have already been fixed for the like purpose, such places shall be deemed to have been so fixed for the purpose of the Order now issued.

Article 9 requires the medical officer of health, after examining a ship infected with cholera, to forward to the Board information as to the arrival of the ship, and such other particulars as they may require.

Under Article 12, any person on board a ship infected with cholera, who is not certified by the medical officer of health to be suffering from cholera, or from any illness which the medical officer of health may suspect to be cholera, is to be permitted to land on giving to the medical officer of health his name and the place of his destination, and also, where practicable, his address at such place. Having obtained this information, it will be the duty of the medical officer of health forthwith to report the same to the clerk to the sanitary authority, who is required thereupon to transmit the particulars to the local authority of the district in which the place of destination is situate. By the term "local authority" is meant any urban or rural sanitary authority, and in the administrative county of London, the Commissioners of Sewers, the vestry or district board under the Metropolis Management Acts, and Woolwich Local Board of Health.

The Board think it important that a local authority should be made aware that a person has come into their district, who, though not himself certified as being infected with cholera, has come from an infected ship, and the Board trust that the requirements of this Article will be strictly complied with.

By Article 19, the master of every ship infected with cholera is required, when within three miles of the coast, to cause to be hoisted the Commercial Code Signal Q, being a yellow flag, under the National Ensign, and to keep the same displayed during the whole of the time between sunrise and sunset.

The term "master," as will be seen from Article 1 of the Order, includes the officer, pilot, or other person for the time being in charge of the ship.

The Order is, of course, designed for the protection of the English shores from the introduction of cholera, and as cases of the disease are now occurring on the Continent, the Board trust that sanitary authorities on the sea-board will use the utmost vigilance in seeing that the provisions of the Order are efficiently and strictly complied with.

I am, Sir, your obedient Servant,

HUGH OWEN, *Secretary*.

To the Clerk to the Sanitary Authority.

CHOLERA REGULATIONS—GENERAL ORDER.

(28th August, 1890.)

TO ALL PORT SANITARY AUTHORITIES ;—

To all other Sanitary Authorities as herein defined ;—

To the Queen's Harbour Masters of Dockyard Ports ;—

To all Officers of Customs ;—

To all Medical Officers of Health of the Sanitary Authorities aforesaid ;—

To all Masters of Ships ;—

To all Pilots ;—

And to all others whom it may concern.

WHEREAS We, the Local Government Board, are empowered by section 130 of the Public Health Act, 1875,(a) from time to time, to make, alter, and revoke such

(a) *Ante*, p. 147.

regulations as to Us may seem fit, with a view to the treatment of persons affected with cholera, and preventing the spread of cholera, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed; Appendix.

And whereas by section 2 of the Public Health Act, 1889,^(b) it is enacted that regulations of the Local Government Board made in relation to cholera and choleraic diarrhœa, in pursuance of section 130 of the Public Health Act, 1875, may provide for such regulations being enforced and executed by the officers of Customs, as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by the said section, may provide for the detention of vessels and of persons on board vessels, and for the duties to be performed by pilots, masters of vessels, and other persons on board vessels; provided that the regulations, so far as they apply to the officers of Customs, shall be subject to the consent of the Commissioners of Her Majesty's Customs;

And whereas by certain Orders dated the 12th day of July, 1883, and an Order dated the 21st day of April, 1884, We prescribed rules and regulations with a view to the treatment of persons affected with cholera, and for preventing the spread of the disease, and it is expedient that such Orders should be revoked, and that further regulations should be prescribed as hereinafter mentioned, to which the Commissioners of Her Majesty's Customs have signified their consent so far as such regulations apply to the officers of Customs;

Now therefore, We, the Local Government Board, do hereby revoke the afore-said Orders, except in so far as they may apply to any proceedings now pending, and We do, by this our Order, and in exercise of the power conferred on Us by the Public Health Act, 1875, as amended and extended by the Public Health Act, 1889, and every other power enabling Us in that behalf, make the following regulations, and declare that they shall be enforced and executed by the authorities hereinafter named:—

Definitions.

ART. 1.—In this Order—

- The term “ship” includes vessel or boat;
- The term “officer of Customs” includes any person acting under the authority of the Commissioners of Her Majesty's Customs;
- The term “master” includes the officer, pilot, or other person for the time being in charge or command of the ship;
- The term “cholera” includes choleraic diarrhœa;
- The term “sanitary authority” means any port sanitary authority and every urban or rural sanitary authority whose district includes or abuts on any part of a customs port, which part is not within the jurisdiction of a port sanitary authority;
- The term “medical officer of health” includes any duly qualified medical practitioner appointed by a sanitary authority to act in the execution of this Order;

For the purposes of this Order,—

- (1.) So much of a customs port abutting on an urban or rural sanitary district as is nearer to such district than to any other, and is not included within the jurisdiction of any port sanitary authority, shall be deemed to be within such district;
- (2.) Every ship shall be deemed infected with cholera, in which there is or has been during the voyage or during the stay of such ship in a port in the course of such voyage, any case of cholera.

I.—Regulations as to Detention by Officers of Customs.

ART. 2.—If any officer of Customs, on the arrival of any ship, ascertain from the master of such ship or otherwise, or have reason to suspect that the ship is infected with cholera, he shall detain such ship, and order the master forthwith to moor or anchor the same in such position as such officer of Customs shall direct; and thereupon the master shall forthwith moor or anchor the ship accordingly.

(b) *Ante*, p. 534.

Appendix.

ART. 3.—Whilst such ship shall be so detained, no person shall leave the same.

ART. 4.—The officer of Customs detaining any ship as aforesaid shall forthwith give notice thereof, and of the cause of such detention, to the sanitary authority of the place to which the ship shall be bound, or where the ship shall be about to call.

ART. 5.—Such detention by the officer of Customs shall cease as soon as the ship shall have been duly visited and examined by the medical officer of health; or, if the ship shall, upon such examination, be found to be infected with cholera, as soon as the same shall be moored or anchored in pursuance of Article 10 of this Order.

Provided, that if the examination be not commenced within twelve hours after notice given as aforesaid, the ship shall, on the expiration of the said twelve hours, be released from detention.

II.—*Regulations as to Sanitary Authorities.*

ART. 6.—Every port sanitary authority and every other sanitary authority within whose district persons are likely to be landed from any ship coming foreign shall, as speedily as practicable, with the approval of the chief officer of Customs of the port, fix some place where any ship may be moored, or anchored, for the purpose of Article 10; and shall make provision for the reception of cholera patients and persons suffering from illness removed under Articles 13 and 14. The place to be fixed as aforesaid, where any ship may be moored or anchored for the purpose of Article 10, shall be some place within the jurisdiction or district of the sanitary authority, unless the Local Government Board otherwise consent; in which case the place so fixed shall, for the purposes of this Order, be deemed to be within such jurisdiction or district.

Provided that in the case of any dockyard port for which a Queen's harbour master has been appointed the place where any ship shall be moored or anchored for the purpose of this Article shall from time to time be fixed by the port sanitary authority with the approval of the Queen's harbour master instead of with that of the chief officer of Customs of the port.

Provided also, that where, in pursuance of any of the above-cited Orders, places have been duly fixed for the mooring or anchoring of ships for the like purpose, such places shall be deemed to have been so fixed in pursuance of this Order.

ART. 7.—The sanitary authority, on notice being given to them by an officer of Customs, under this Order, shall forthwith cause the ship in regard to which such notice shall have been given, to be visited and examined by their medical officer of health for the purpose of ascertaining whether she is infected with cholera.

ART. 8.—The medical officer of health, if he have reason to believe that any ship coming or being within the jurisdiction or district of the sanitary authority, whether examined by the officers of Customs or not, is infected with cholera, shall, or if she have come from a place infected with cholera, may, visit and examine such ship, for the purpose of ascertaining whether she is so infected; and the master of such ship shall permit the same to be so visited and examined.

ART. 9.—If the medical officer of health on making such examination as aforesaid (whether under Article 7 or under Article 8), shall be of opinion that the ship is infected, he shall forthwith give a certificate in duplicate in the following form, or to the like effect, and shall deliver one copy to the master, and retain the other copy or transmit it to the sanitary authority. He shall also give to the Local Government Board information as to the arrival of the ship, and such other particulars as that Board may require.

Certificate.

— day of — 189 .

— SANITARY AUTHORITY OF —.

I hereby certify that I have examined the ship of , now lying in the Port of [or detained at] and that I find that she is infected with cholera.

Medical Officer of Health [or *Medical Practitioner* appointed by the Sanitary Authority].

ART. 10.—The master of any ship so certified to be infected with cholera shall thereupon moor or anchor her at the place fixed for that purpose under Article 6, and she shall remain there until the requirements of this Order have been duly fulfilled. Appendix.
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ART. 11.—No person shall leave any such ship until the examination hereinafter mentioned shall have been made.

ART. 12.—The medical officer of health shall, as soon as possible after any such ship has been certified to be infected with cholera, examine every person on board the same, and in the case of any person suffering from cholera or from any illness which the medical officer of health suspects may prove to be cholera, shall certify accordingly; *[and any person who shall not be so certified by him shall be permitted to land immediately on giving to the medical officer of health his name and place of destination, stating, where practicable, his address at such place](a).*

The name and address of any such person shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and such clerk shall thereupon transmit to the local authority of the district in which the place of destination of such person is situate.

In this Article the term "local authority" means any urban or rural sanitary authority; and in the administrative county of London, the Commissioners of Sewers, the vestry under the Metropolis Management Act, 1855, of a parish in Schedule A., and the district board of a district in Schedule B. to that Act, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, and the Woolwich Local Board of Health.

ART. 13.—Every person certified by the medical officer of health to be suffering from cholera shall be removed, if his condition admit of it, to some hospital or other suitable place appointed for that purpose by the sanitary authority; and no person so removed shall leave such hospital or place until the medical officer of health shall have certified that such person is free from the said disease.

If any person suffering from cholera cannot be removed, the ship shall remain subject, for the purposes of this Order, to the control of the medical officer of health; and the infected person shall not be removed from or leave the ship, except with the consent in writing of the medical officer of health.

ART. 14.—Any person certified by the medical officer of health to be suffering from any illness which such officer suspects may prove to be cholera, may either be detained on board the ship for any period not exceeding two days, or be taken to some hospital or other suitable place appointed for that purpose by the sanitary authority, and detained there, for a like period, in order that it may be ascertained whether the illness is or is not cholera.

Any such person who, while so detained, shall be certified by the medical officer of health to be suffering from cholera, shall be dealt with as provided by Article 13 of this Order.

ART. 15.—The medical officer of health shall, in the case of every ship certified to be infected, give directions, and take such steps as may appear to him to be necessary, for preventing the spread of infection, and the master of the said ship shall forthwith carry into execution such directions as shall be so given to him.

ART. 16.—In the event of any death from cholera taking place on board such ship while detained under Article 10, the master shall, as directed by the sanitary authority or the medical officer of health, either cause the dead body to be taken out to sea, and committed to the deep, properly loaded to prevent its rising, or shall deliver it into the charge of the said authority for interment; and the authority shall thereupon have the same interred.

ART. 17.—The master shall cause any articles that may have been soiled with cholera discharges to be destroyed, and the clothing and bedding and other articles of personal use likely to retain infection which have been used by any person who may have suffered from cholera on board such ship, or who, having left such ship, shall have suffered from cholera during the stay of such ship in any port, to be disinfected or (if necessary) destroyed; and if the master shall have neglected to do so before the ship arrives in port, he shall forthwith, upon the direction of the sanitary authority or the medical officer of health, cause the same to be disinfected

(a) See the amendment of this article by the Order of 6th September, 1892, *post*.

Appendix. — or destroyed, as the case may require; and if the said master neglect to comply with such direction within a reasonable time, the authority shall cause the same to be carried into execution.

ART. 18.—The master shall cause the ship to be disinfected, and every article therein, other than those last described, which may probably be infected with cholera, to be disinfected or destroyed, according to the directions of the medical officer of health.

III.—*Flag to be hoisted by Ships infected with Cholera.*

ART. 19.—The master of every ship infected with cholera shall, when within three miles of the coast of any part of England or Wales, cause to be hoisted the Commercial Code Signal Q, being a yellow flag, under the National Ensign, and shall keep the same displayed during the whole of the time between sunrise and sunset.

Given under the Seal of Office of the Local Government Board, this twenty-eighth day of August, in the year one thousand eight hundred and ninety.

(L.S.)

CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

Date of publication in the *London Gazette*, 29th August, 1890.

NOTICE.—The Public Health Act, 1875, provides by section 130 that any person wilfully neglecting, or refusing to obey or carry out, or obstructing the execution of any regulation made under that section, shall be liable to a penalty not exceeding *Fifty Pounds*.

PRECAUTIONS AGAINST THE INFECTION OF CHOLERA— MEMORANDUM.

(26th August, 1892.)

1. The Order of the Local Government Board, of 28th August, 1890, (a) now in force, gives certain special powers to port and riparian sanitary authorities, enabling them to deal with any cases of cholera brought into their districts, so as to prevent as far as possible the spread of the disease into the country. But it is to be remembered that cases of choleraic infection differ widely in severity, and that persons suffering only slightly from the disease, or incubating it, are likely to be landed at English sea-board and riparian towns, and to make their way to inland places. This has, in fact, occurred in former epidemics.

2. Former experience of cholera in England justifies a belief that the presence of imported cases of the disease at various spots in the country will not be capable of causing much injury to the population, if the places receiving the infection have had the advantage of proper sanitary administration; and, in order that all local populations may make their self-defence as effective as they can, it will be well for them to have regard to the present state of knowledge concerning the mode in which epidemics of cholera (at least in this country) are produced.

3. Cholera in England shows itself so little contagious, in the sense in which small-pox and scarlatina are commonly called contagious, that, if reasonable care be taken where it is present, there is almost no risk that the disease will spread to persons who nurse and otherwise closely attend upon the sick. But cholera has a certain peculiar infectiveness of its own, which, *where local conditions assist*, can operate with terrible force, and at considerable distances from the sick. It is characteristic of cholera (and as much so of the slight cases where diarrhoea is the only symptom as of the disease in its more developed and alarming forms) that *the matters which the patient discharges from his stomach and bowels are infective*. Probably, under ordinary circumstances, the patient has no power of infecting other persons except by means of these discharges; nor any power of infecting even by them except in so far as these matters are enabled to taint the food, water, or

(a) *Ante*, p. 1400.

air, which people consume. Thus, when a case of cholera is imported into any place, the disease is not likely to spread, unless in proportion as it finds, locally open to it, certain facilities for spreading by *indirect infection*.

Appendix.

4. In order rightly to appreciate what these facilities must be, the following considerations have to be borne in mind:—*first*, that any choleraic discharge, cast without previous thorough disinfection into any cesspool or drain, or other depository or conduit of filth, is able to infect the excremental matters with which it there mingles, and probably, more or less, the effluvia which those matters evolve; *secondly*, that the infective power of choleraic discharges attaches to whatever bedding, clothing, towels and like things, have been imbued with them, and renders these things, if not thoroughly disinfected, capable of spreading the disease in places to which they are sent for washing or other purposes; *thirdly*, that if, by leakage or soakage from cesspools or drains, or through reckless casting out of slops and waste water, any taint (however small) of the infective material gets access to wells or other sources of drinking-water, it can impart to enormous volumes of water the power of propagating the disease. When due regard is had to these possibilities of indirect infection, there will be no difficulty in understanding that even a single case of cholera, perhaps of the slightest degree, and perhaps quite unsuspected in its neighbourhood, may, *if local circumstances co-operate*, exert a terribly infective power on considerable masses of population.

5. The dangers which have to be guarded against as favouring the spread of cholera-infection are particularly two. First, and above all, there is the danger of WATER-SUPPLIES which are in any (even the slightest) degree tainted by house refuse or other like kind of filth; as where there is outflow, leakage or filtration, from sewers, house-drains, privies, cesspools, foul ditches or the like, into springs, streams, wells or reservoirs, from which the supply of water is drawn, or into the soil in which the wells are situate; a danger which may exist on a small scale (but perhaps often repeated in the same district) at the pump or dip-well of a private house, or, on a large or even vast scale, in the case of public water-works. And secondly, there is the danger of breathing AIR which is foul with effluvia from the same sorts of impurity.

6. Information as to the high degree in which those two dangers affect the public health in ordinary times, and as to the special importance which attaches to them at times when any diarrhoeal infection is likely to be introduced, has now for so many years been before the public, that the improved systems of refuse-removal and water-supply by which those dangers are permanently obviated for large populations, and also the minor structural improvements by which separate households are secured against them, ought long ago to have come into universal use.

So far, however, as this wiser course has not been adopted in any sanitary district, security must, as far as practicable, be sought in measures of a temporary and palliative kind.

(a.) Immediate and searching examination of sources and conduits of water supply should be made in all cases where drinking water is in any degree open to the suspicion of impurity: and the water both from private and public sources should be examined. Where pollution is discovered, everything practicable should be done to prevent the pollution from continuing, or, if this object cannot be obtained, to prevent the water from being drunk. Cisterns should be cleaned, and any connexions of waste-pipes with drains should be severed.

(b.) Simultaneously, there should be immediate thorough removal of every sort of house-refuse and other filth which has accumulated in neglected places; future accumulations of the same sort should be prevented; attention should be given to all defects of house-drains and sinks through which offensive smells can reach houses; thorough washing and lime washing of uncleanly premises, especially of such as are densely occupied, should be practised again and again.

7. It may fairly be believed that, in considerable parts of the country, conditions favourable to the spread of cholera are now less abundant than in former times; and in this connexion, the gratifying fact deserves to be recorded that during recent years enteric fever, the disease which in its methods of extension bears the nearest resemblance to cholera, has continuously and notably declined in England. But it is certain that in many places such conditions are present as would, if cholera were introduced, assist in the spread of that disease. It is to be hoped that in all these

Appendix. cases, the local sanitary authorities will at once do everything that can be done to put their districts into a wholesome state. Measures of cleanliness, taken beforehand, are of far more importance for the protection of a district against cholera than removal or disinfection of filth after the disease has actually made its appearance.

8. It is important for the public very distinctly to remember that pains taken and costs incurred for the purposes to which this Memorandum refers cannot in any event be regarded as wasted. The local conditions which would enable cholera, if imported, to spread its infection in this country, are conditions which day by day, in the absence of cholera, foster and spread other diseases: diseases, which are never absent from the country, and are in the long run, far more destructive than cholera. Hence the sanitary improvements which would justify a sense of security against any apprehended importation of cholera would, to their extent, though cholera should never reappear in England, give amply remunerative results in the prevention of those other diseases.

Local Government Board,
August 26th, 1892.

R. THORNE THORNE,
Medical Officer of the Board.

CHOLERA REGULATIONS—CIRCULAR.

(6th September, 1892.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
6th September, 1892.

SIR,—I am directed by the Local Government Board to state that they have deemed it desirable to issue an Order consolidating the regulations which have recently been made by them with regard to the action to be taken with a view to preventing the introduction and spread of cholera in this country.

The Board, in the new Order, have also made applicable to a ship which has come from a place infected with cholera the provisions which now apply to a ship which has on board passengers in a filthy or otherwise unwholesome condition, with respect to the requirement as to the names, places of destination, and addresses at such places of the persons on board the ship. It will be observed that these provisions will only come into operation when the medical officer of health has deemed it desirable, with a view to checking the introduction or spread of cholera, to give the certificate provided for by Article II. of the Order. The medical officer of health will, of course, before giving any such certificate, carefully consider all the circumstances of the particular case.

Two copies of the Order and a copy of this circular letter are enclosed, and it is requested that one copy of the Order and circular may be given to the medical officer of health.

I am, Sir, your obedient Servant,
HUGH OWEN, *Secretary.*

The Clerk to the Sanitary Authority.

CHOLERA REGULATIONS.—GENERAL ORDER.

(6th September, 1892.)

TO ALL PORT SANITARY AUTHORITIES;—

To all other Sanitary Authorities as defined in our Order of the 28th day of August, 1890, hereafter recited;—

To all Masters of Ships;—

And to all others whom it may concern.

WHEREAS, We, the Local Government Board, are empowered by section 130 of the Public Health Act, 1875,(a) and section 2 of the Public Health Act, 1889,(b) from

(a) *Ante*, p. 147.

(b) *Ante*, p. 534.

time to time, to make, alter, and revoke such regulations as to us may seem fit, with a view to the treatment of persons affected with cholera, and preventing the spread of cholera, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land, and may declare by what authority or authorities such regulations shall be enforced and executed; Appendix.

And whereas by an Order dated the 28th day of August, 1890,^(c) We, the Local Government Board, made regulations under section 130 of the Public Health Act, 1875, and section 2 of the Public Health Act, 1889, with a view to the treatment of persons affected with cholera, and preventing the spread of cholera;

And whereas Article 12 of those Regulations provides as follows:—

“The medical officer of health shall, as soon as possible after any such ship has been certified to be infected with cholera, examine every person on board the same, and in the case of any person suffering from cholera or from any illness which the medical officer of health suspects may prove to be cholera, shall certify accordingly; and any person who shall not be so certified by him shall be permitted to land immediately on giving to the medical officer of health his name and place of destination, stating, where practicable, his address at such place.

“The name and address of any such person shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and such clerk shall thereupon transmit the same to the local authority of the district in which the place of destination of such person is situate;”

And whereas the above-recited Order has been amended by Orders made by Us and dated the 29th and 31st days of August, 1892, by which further regulations are made under the said sections; and it is desirable that the provisions of the last-mentioned Orders should be consolidated and amended:

Now, therefore, We, the Local Government Board, do, by this Our Order, in the exercise of the power conferred on Us by the Public Health Act, 1875, the Public Health Act, 1889, and every other power enabling us in that behalf, revoke the said Orders dated the 29th and 31st days of August, 1892 (except so far as relates to any proceedings taken or commenced thereunder), and make the following regulations, and declare that they shall be duly enforced and executed:—

ART. 1.—Article 12 of the said Order dated the 28th day of August, 1890,^(d) shall be amended by the omission therefrom of the words, “and any person who,” and the following words to the end of the first paragraph, and the insertion of the following words in place thereof: “and a person who shall not be so certified shall not be permitted to land, unless he satisfy the medical officer of health as to his name, place of destination, and address at such place.”

ART. 2.—Where a ship is not infected with cholera, but has passengers on board who are in a filthy or otherwise unwholesome condition, or has come from a place infected with cholera, the medical officer of health may, if in his opinion it is desirable with a view to checking the introduction or spread of cholera, give a certificate in duplicate in the following form, or to the like effect, and shall deliver one to the master, and retain the other or transmit it to the sanitary authority:—

CERTIFICATE.

day of , 189 .

SANITARY AUTHORITY OF

I hereby certify that I have examined the ship from now in the port of , and that she has passengers on board in a filthy or otherwise unwholesome condition [or has come from a place infected with cholera], and that, in my opinion, it is desirable with a view to checking the introduction or spread of cholera, that the persons on board the ship should not be allowed to land unless they satisfy me as to their names, places of destination, and addresses at such places.

(Signed)

Medical Officer of Health (or Medical Practitioner appointed by the sanitary authority).

^(c) *Ante*, p. 1400.

^(d) *Ante*, p. 1403.

Appendix.

ART. 3.—When such certificate has been given, no person on board the ship shall leave or be allowed to leave the same unless he satisfy the medical officer of health as to his name, place of destination, and address at such place; and such name and address shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and such clerk shall thereupon transmit the same to the local authority of the district in which the place of destination of such person is situate.

In this Article the term “local authority” means any urban or rural sanitary authority, and in the administrative county of London any sanitary authority as defined by the Public Health (London) Act, 1891.

ART. 4.—If the medical officer of health have reason to believe that any ship coming or being within the jurisdiction of the sanitary authority is infected with cholera, or has come from a place infected with cholera, he may direct the bilge water to be pumped out before such ship enters any dock or basin; and on the sanitary authority providing a proper supply of water for drinking and cooking purposes for persons on board the ship, he may direct all casks or tanks on board the ship containing water for the use of such persons to be emptied and cleansed, and the master shall cause the said directions to be carried into effect.

ART. 5.—This Order shall be read as one with the said Order dated the 28th day of August, 1890, and words herein shall have the same meaning as words in that Order.

Given under the Seal of Office of the Local Government Board, this sixth day of September, in the year one thousand eight hundred and ninety-two.

(L.S.) HENRY H. FOWLER, *President*.

HUGH OWEN, *Secretary*.

NOTICE.—The Public Health Act, 1875, provides, by section 130, that any person wilfully neglecting, or refusing to obey or carry out, or obstructing the execution of any regulation made under that section, shall be liable to a penalty not exceeding *fifty pounds*.

CHOLERA REGULATIONS (BEDDING AND CLOTHING)—CIRCULAR.

(7th August, 1893.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,

7th August, 1893.

SIR,—I am directed by the Local Government Board to advert to the Orders which they issued on the 11th and 13th of July and the 11th of August, 1892, directing that no rags from France or from any port on the Black Sea or Sea of Azov, whether in Russia, Roumania, Bulgaria, or Turkey or from any other port of Turkey in Asia, and no rags, bedding, or disused or filthy clothing from any foreign port in Europe north of Dunkirk, other than ports of Sweden, Norway, and Denmark, should be delivered overside, except for the purpose of export, nor landed in any port in England or Wales, and also to the Order which the Board issued on the 14th of December last amending in certain particulars the Orders referred to above, and to state that the Board have determined to relax the requirements of those Orders, so far as they relate to rags packed in bales and imported as merchandise.

The Board have accordingly issued an Order, two copies of which are enclosed, rescinding the Orders above mentioned and prescribing other regulations. The regulations contained in the new Order extend only to dirty bedding or disused or filthy clothing, and it is provided that the terms “bedding” and “clothing” shall include such articles when torn up, but shall not include rags packed in bales and imported as merchandise. The limit of time within which dirty bedding or disused or filthy clothing which is delivered overside or landed for the purpose of disinfection is required to be disinfected has been fixed at forty-eight hours, and it is provided that any such articles delivered overside or landed for the purpose referred to which are not disinfected within the time fixed shall be destroyed within twenty-four hours by the person having control of the same; and that similar articles

delivered overside or landed for destruction shall be destroyed by such person Appendix.
within twenty-four hours.

The Order further provides for the destruction by the sanitary authority, or their medical officer of health, at the cost of the person having control over the same, of any bedding or clothing delivered overside or landed for the purpose of disinfection or destruction and not disinfected or destroyed by such person within the prescribed time.

The Order comes into operation on the 9th instant, and will continue in force until the Board, by order, otherwise direct.

I am, Sir, your obedient Servant,

The Clerk to the Sanitary Authority.

HUGH OWEN, *Secretary.*

CHOLERA REGULATIONS (BEDDING AND CLOTHING)—GENERAL ORDER.

(5th August, 1893.)

TO ALL PORT SANITARY AUTHORITIES;—

To all Urban and Rural Sanitary Authorities;—

To all Medical Officers of Health of the Sanitary Authorities aforesaid;—

To all Officers of Customs;—

To all Masters of Ships;—

And to all others whom it may concern.

WHEREAS We, the Local Government Board, by Orders dated the 11th day of July, 1892, the 13th day of July, 1892, the 11th day of August, 1892, and the 14th day of December, 1892, made certain regulations with reference to ships from France, or from any foreign port in Europe north of Dunkirk other than ports of Sweden, Norway, and Denmark, or from any port on the Black Sea or Sea of Azov, whether in Russia, Roumania, Bulgaria, or Turkey, or from any other port of Turkey in Asia, having on board bales of rags, or dirty bedding, or disused or filthy clothing;

And whereas it is expedient that the said regulations should be revoked, and that the regulations herein contained should be substituted therefor:

Now therefore, We, the Local Government Board, by this Our Order, revoke the regulations contained in the said Orders dated the eleventh day of July, one thousand eight hundred and ninety-two, the thirteenth day of July, one thousand eight hundred and ninety-two, the eleventh day of August, one thousand eight hundred and ninety-two, and the fourteenth day of December, one thousand eight hundred and ninety-two;

And whereas the Commissioners of her Majesty's Customs have signified their consent to the regulations herein contained so far as the same apply to the officers of Customs:

Now therefore, We do, by this Our Order, and in exercise of the power conferred on Us by section 130 of the Public Health Act, 1875,^(a) by the Public Health Act, 1889,^(b) and by section 113 of the Public Health (London) Act, 1891, and of every other power enabling Us in this behalf, make the following regulations, and declare that they shall be enforced and executed by the authority or authorities hereinafter specified:—

ARTICLE 1.—In this Order—

The term “sanitary authority” means port sanitary authority, urban sanitary authority, or rural sanitary authority;

The term “ship” includes vessel or boat;

The term “officer of Customs” includes any person acting under the authority of the Commissioners of her Majesty's Customs;

(a) *Ante*, p. 147.

(b) *Ante*, p. 534.

Appendix.

The term "master" includes the officer, pilot, or other person for the time being in charge or command of a ship;

The terms "bedding" and "clothing" shall include such articles when torn up, but shall not include rags packed in bales and imported as merchandise.^(a)

ARTICLE 2.—From and after the ninth day of August, one thousand eight hundred and ninety-three, and until We shall, by Order, otherwise direct, no dirty bedding, or disused or filthy clothing, whether belonging to emigrants or otherwise, from France or from any foreign port in Europe north of Dunkirk other than ports of Sweden, Norway, and Denmark, or from any port on the Black Sea or Sea of Azov, whether in Russia, Roumania, Bulgaria, or Turkey, or from any other port of Turkey in Asia, shall be delivered overside, except for the purpose of disinfection or destruction, nor landed in any port or place in England or Wales, except for the purpose of disinfection or destruction.

ARTICLE 3.—Any such bedding or clothing delivered overside or landed for the purpose of disinfection shall not be taken out of the custody of the officers of Customs until the same shall have been disinfected by and at the cost of the person having control over the same, by means of steam under pressure in such manner as to secure the exposure of every part of every article, to a temperature of not less than 212° Fahrenheit, nor until the medical officer of health shall have given a certificate to an officer of Customs as to such disinfection, which certificate shall be in the following form:—

PORT OF .

"I hereby certify that the [*bedding or clothing*] delivered overside or landed at this port from the ship [*name of ship*] of or from [*port of sailing*], has been disinfected at this port in accordance with the provisions of Article 3 of the Order of the Local Government Board dated the 5th August, 1893.

"(Signed) ———, Medical Officer of Health.

"Date 189 ."

ARTICLE 4.—Any expenses incurred by the Commissioners of her Majesty's Customs in watching articles delivered overside or landed for the purpose of disinfection or destruction under this Order shall be defrayed by the person having control over the same.

ARTICLE 5.—If any such bedding or clothing so delivered overside or landed for the purpose of disinfection shall not, within a period of forty-eight hours after being so delivered or landed, be disinfected and certified as aforesaid, such bedding or clothing shall, within twenty-four hours after the expiration of such period, be destroyed by the person having control over the same, with such precautions as may be directed by the medical officer of health of the sanitary authority within whose jurisdiction or district the same may be found.

ARTICLE 6.—Any such bedding or clothing so delivered overside or landed for the purpose of destruction shall, within twenty-four hours after being so delivered or landed, be destroyed by the person having control over the same, with such precautions as may be directed by the medical officer of health of such sanitary authority as aforesaid.

ARTICLE 7.—If the person having control over any bedding or clothing so delivered overside or landed for the purpose of disinfection or destruction shall make default in complying with the requirements of Article 5 or Article 6 of this Order, such bedding or clothing shall be forthwith destroyed, at the cost of such person, by such sanitary authority as aforesaid, or by or under the direction of the medical officer of health of such sanitary authority acting on their behalf.

ARTICLE 8.—All masters of ships and other persons having control over any bedding or clothing prohibited under this Order from being delivered overside or landed as aforesaid are required to obey these regulations.

ARTICLE 9.—All officers of Customs are empowered to prevent the delivery overside or landing of bedding or clothing in contravention of this Order.

^(a) See the interpretation of this expression by the amending Order of the 13th September, 1893, *post*.

ARTICLE 10.—It shall be the duty of the sanitary authority to take proceedings against masters of ships or other persons having control over any such bedding or clothing who shall wilfully neglect or refuse to obey or carry out, or shall obstruct the execution of any of these regulations. Appendix.

Given under the Seal of Office of the Local Government Board, this fifth day of August, in the year One thousand eight hundred and ninety-three.

(L.S.) HENRY H. FOWLER, *President*.

HUGH OWEN, *Secretary*.

NOTICE.—The Public Health Act, 1875, provides by section 130 that any person wilfully neglecting, or refusing to obey or carry out, or obstructing the execution of any regulation made under that section shall be liable to a penalty not exceeding fifty pounds.

CHOLERA REGULATIONS (BEDDING AND CLOTHING)—GENERAL ORDER.

(13th September, 1893.)

TO ALL PORT SANITARY AUTHORITIES;—

To all Urban and Rural Sanitary Authorities;—

To all Medical Officers of Health of the Sanitary Authorities aforesaid;—

To all Officers of Customs;—

To all Masters of Ships;—

And to all others whom it may concern.

WHEREAS We, the Local Government Board, by an Order dated the 5th day of August, 1893,^(b) made certain regulations prescribing that from and after the 9th day of August, 1893, and until We should by Order otherwise direct, no dirty bedding, or disused or filthy clothing, whether belonging to emigrants or otherwise, from France or from any foreign port in Europe north of Dunkirk other than ports of Sweden, Norway, and Denmark, or from any port on the Black Sea or Sea of Azov, whether in Russia, Roumania, Bulgaria, or Turkey, or from any other port of Turkey in Asia, shall be delivered overside, except for the purpose of disinfection or destruction, nor landed in any port or place in England or Wales, except for the purpose of disinfection or destruction;

And whereas in Article 1 of such Order the terms “bedding” and “clothing” were defined as including such articles when torn up, but not including rags packed in bales and imported as merchandise;

And whereas doubts have arisen as to the meaning of the words “rags packed in bales and imported as merchandise”;

And whereas the Commissioners of Her Majesty’s Customs have signified their consent to the regulation herein contained so far as the same apply to the officers of Customs:

Now therefore, We do, by this Our Order, and in exercise of the power conferred on Us by section 130 of the Public Health Act, 1875, by the Public Health Act, 1889, and by section 113 of the Public Health (London) Act, 1891, and of every other power enabling Us in this behalf, make the following regulation, and declare as follows:—

The above-mentioned words “rags packed in bales and imported as merchandise” mean rags compressed by hydraulic force transported as wholesale merchandise in bales surrounded by iron bands, and with marks and numbers showing their origin, and accepted as such by the Commissioners of Her Majesty’s Customs.

Given under the Seal of Office of the Local Government Board, this thirteenth day of September, in the year One thousand eight hundred and ninety-three.

(L.S.) HENRY H. FOWLER, *President*.

HUGH OWEN, *Secretary*.

(b) *Ante*, p. 1409.

Appendix.**COMPULSORY PURCHASE OF LAND.(a)****PROCEEDINGS UNDER SECTION 9 OF THE LOCAL GOVERNMENT ACT, 1894—CIRCULAR.**

(23rd May, 1895.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
23rd May, 1895.

SIR,—I am directed by the Local Government Board to state that they have issued an Order prescribing regulations and adaptations of certain provisions of the Allotments Acts, 1887 and 1890, applicable to proceedings under section 9 of the Local Government Act, 1894,(b) upon petitions of district councils under section 3 (2) of the Allotments Act, 1887,(c) with a view to the compulsory purchase of land for allotments.

The Board also enclose a copy of a Memorandum containing a brief explanation of certain points in connection with cases to which the Order will apply.

Two copies of the Order are enclosed.

I am, Sir, your obedient Servant,

ALFRED D. ADRIAN, *Assistant Secretary.*

To the Clerk to the District Council.

PROCEEDINGS UNDER SECTION 9 OF THE LOCAL GOVERNMENT ACT, 1894—MEMORANDUM.

(May, 1895.)

THE provisions of this Order relate to cases of two kinds, viz.: (1) Representations by parish councils under section 9 (2) of the Local Government Act, 1894; and (2) certain proceedings under the Allotments Acts, 1887 and 1890.

As to cases of the first description, it may be pointed out that if a parish council are unable to purchase by agreement and on reasonable terms suitable land for any purpose (other than allotments) for which they are authorised to purchase land (as, for example, for a purpose within the scope of the powers of the parish council under section 8 of the Local Government Act, 1894), they may represent the case to the county council. If, on any such representation, the county council are satisfied that suitable land for the purpose of the parish council cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under section 9 of the Local Government Act, 1894, the county council are then to cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed by the Local Government Board.

In Articles I. and II. of the Order, the Local Government Board have prescribed regulations as to the preliminary notices and as to the public inquiry.

Article III., in pursuance of sub-section 6 of section 9, prescribes the mode of service of Orders made by county councils under the section.

Article IV. relates to the same matter, and also to the mode of serving copies of the notices referred to in Articles I. and II.

Article V. prescribes the period within which a memorial by some person interested, praying that an Order made under section 9 shall not become law without further inquiry, may be presented to the Board.

Article VI. prescribes adaptations of the provisions of sub-sections (5), (6), (7),

(a) See also *tit.* "Allotments," *ante*, p. 1382.

(b) *Ante*, p. 704.

(c) *Ante*, p. 1217.

and (8) of section 3, and of section 11 of the Allotments Act, 1887, and of section 3 of the Allotments Act, 1890. Appendix.

(2.) As regards proceedings under the Allotments Acts, 1887 and 1890, it may be observed that the provisions of the Order relate to proceedings taken on (i.) the petition under section 2 of the Allotments Act, 1890, of persons qualified as mentioned in that section; (ii.) on the petition of the parish council; and (iii.) on the petition of the district council.

(3.) As to cases (i.) and (ii.), the following explanation will show the various steps which are necessary to bring matters to a point at which the county council may elect to take action under section 9 of the Local Government Act, 1894:—

Under section 2 of the Allotments Act, 1887, on a representation in writing to the district council of any urban or rural district by any six parliamentary electors or ratepayers resident, in the case of an urban district, in that district, and in the case of a rural district, in some parish in that district, that the circumstances of the urban district or parish are such that it is the duty of the district council to take proceedings therein under that Act, the district council are to take such representation into consideration.

Where such a representation has been made, and any six persons qualified to make the representation consider that the circumstances of the district or parish are such as to make it the duty of the district council to take proceedings therein under the Allotments Act, 1887, and that the district council (not being the town council of a borough) have failed to acquire land adequate and suitable in quality and position to provide a sufficient number of allotments, these persons, under section 2 (1) of the Allotments Act, 1890, may petition the county council, stating the facts and requesting the county council to put into force the Act of 1887, for the purpose of providing a sufficient number of allotments for the district or parish.

Where a parish in a rural district has a parish council, that council may exercise the power of the six parliamentary electors in the matter of the preliminary representation; but the power thus conferred upon the parish council is additional to and not in substitution for that of the electors; and in the case of such a parish the further power of petitioning the county council is exerciseable by the parish council as well as by the electors.

In an urban district, however, the representation and the petition can only come from the six registered parliamentary electors or ratepayers resident in the district.

But the representation to the district council is a condition precedent to the exercise of the power of petitioning, and the statement of facts which the petitioners are to make should include a reference to the prior representation as indicating a basis for the action of the petitioners.

For the proper investigation of matters arising upon such petitions the Allotments Act, 1890, provides for the appointment by the county council of a standing committee. Annually, at the meeting for the election of chairman, the county council are to appoint under the Local Government Act, 1888, a standing committee not exceeding one-fourth of the whole council. For business relating to any district or parish wholly or partly situate in an electoral division, the county councillor representing that division is, if not already appointed, to be an additional member of the committee. The petition is, as of course, and without any order of the council, to be referred to the standing committee. The committee, on being satisfied of the *bona fides* of the application, are forthwith to cause a local inquiry into the circumstances to be made and to report the result to the council.

When this report has been received, it will rest with the county council to decide whether they will proceed further under the Allotments Act, 1890, or whether they will have recourse to the new procedure authorised by section 9 of the Local Government Act, 1894.

It may be added that (1) in a rural parish having a parish council, procedure with a view to an order under section 9 of the Local Government Act, 1894, on the petition of parliamentary electors, or ratepayers, or of the parish council will not be available unless it can be shown that there has been failure on the part of the district council to exercise their powers, and that land cannot be acquired on reasonable terms by voluntary agreement; and that (2) in the case of a rural parish not having a parish council, the procedure will not be applicable unless the parish meeting has under section 19 of that Act been invested with the powers in this particular of the parish council. For without a parish council or a meeting

Appendix. — invested with its powers there will be nobody to whom the land acquired by the county council can be assured under sub-section 14 of section 9 of the Local Government Act, 1894.

In relation to procedure under section 9, Article I. prescribes the notice to be given in the parish or in the district (if it be urban), and to the owners, lessees, and occupiers of the land proposed to be taken. Article II. prescribes the notice of the public inquiry; Article III. prescribes the mode of serving copies of Orders made by county councils; Article IV. relates to the same subject and also to the service of copies of the notices prescribed by Articles I. and II.; Article V. prescribes the period within which a memorial by a person interested, praying that an Order shall not become law without further inquiry, may be presented to the Local Government Board; and Article VI. prescribes adaptations of sub-section (2) of section 2, sub-sections (5), (6), (7), and (8) of section 3, and of section 11 of the Allotments Act, 1887, and section 3 of the Allotments Act, 1890.

(4.) With respect to case (iii.), in which proceedings under the Allotments Acts, 1887 and 1890, are taken on the petition of the district council, it may be said that the occasion for resorting to the procedure which section 9 of the Local Government Act, 1894, authorises, may arise at a stage in proceedings under the Allotments Act, 1887, at which the district council are met by the difficulty that suitable land sufficient for allotments for their district or any parish in their district cannot be acquired by them by hiring or purchase by agreement at a reasonable price or rent, and subject to reasonable conditions.

At this stage the district council, under section 3 (2) of the Allotments Act, 1887, may petition the county council. On the receipt of such a petition it will be referred for investigation and report to the standing committee appointed by the county council under section 3 of the Allotments Act, 1890.

Assuming that on the report of the standing committee the county council consider that the case is one in which they should proceed under section 9 of the Local Government Act, 1894, it will be incumbent upon them in taking the various steps indicated in that enactment to observe the requirements of Articles I.—IV. of the Order. Articles V. and VI. also apply to cases in which district councils are concerned.

Local Government Board,
May, 1895.

COMPULSORY PURCHASE OF LAND—GENERAL ORDER.

(22nd May, 1895.)

To THE COUNTY COUNCIL of every Administrative County in England and Wales, except the Administrative County of London;—

To the Urban District Council of each Urban District in England and Wales which is not a County Borough;—

To the Rural District Council of each Rural District in England and Wales;—

To each Parish Council in England and Wales;—
And to all others whom it may concern.

WHEREAS by section 9 of the Local Government Act, 1894, (a) it is enacted that—

“9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

“(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

“(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be) cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

“(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an Order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

“(5.) If the county council refuse to make any such Order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the Order, and this section shall apply as if the Order had been made by the county council. Any Order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

“(6.) A copy of any Order made under this section shall be served in the prescribed manner, together with a statement that the Order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the Order shall not become law without further inquiry.

“(7.) The Order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then after the prescribed period—

“(a.) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the Order:

* * * * *

“(10.) Any Order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a), (b), and (c) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

* * * * *

“(13.) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.”

* * * * *

And whereas by section 75 of the said Act (b) it is enacted that, in that Act, unless the context otherwise requires, the expression “prescribed” means prescribed by order of the Local Government Board:

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this our Order, and until We shall otherwise direct, prescribe as follows; that is to say,—

ARTICLE I.—In every case in which a county council on a representation by a

Appendix. parish council under sub-section (2) of section nine of the Local Government Act, 1894, or on any proceeding under the Allotments Acts, 1887 and 1890, propose to proceed under section nine of the Local Government Act, 1894, and, with a view to such proceeding, to cause public inquiry to be made, the county council shall, not less than six weeks before the day on which it is proposed that the inquiry shall be held, cause notice to be given in such form and in such manner as are hereinafter prescribed :—

I.—The notice shall specify the particulars of the representation or of the proceeding under the Allotments Acts, 1887 and 1890, and shall state that the county council propose to cause public inquiry to be made.

II.—The notice shall further specify as regards any land proposed to be taken, the quantity and description, and the situation of the land proposed to be taken, the names of the owners, lessees, and occupiers of the said land, and the purpose for which the said land is proposed to be taken.

III.—A printed copy of the notice shall be sent by post by the county council to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

ARTICLE II.—The county council, not more than one calendar month and not less than two weeks before the holding of the public inquiry, shall cause a notice to the like effect as that of the notice prescribed by Article I., and containing also a statement of the day, time, and place appointed for the holding of the inquiry, and of the person or persons by whom the inquiry is to be held, to be published and given in accordance with the following requirements ; that is to say,—

I.—The notice shall be published in the parish or, in the case of any proceeding under the Allotments Acts, 1887 and 1890, relating to an urban district, in the district by posting a printed copy of the notice as a bill or placard in every such place in the parish or district as is ordinarily used for posting public or parochial notices.

II.—A printed copy of the notice shall be sent by post by the county council :—

(a.) Where the county council propose to proceed on a representation of the parish council under sub-section (2) of section nine of the Local Government Act, 1894,—
to the parish council : and

(b.) In the case of any proceeding under the Allotments Acts, 1887 and 1890 :

i. Where the proceeding is taken on a petition under section two of the Allotments Act, 1890, by persons qualified as mentioned in that section,—

to each of the petitioners.

ii. Where the proceeding is taken on the petition of the parish council,—

to the parish council.

iii. Where the proceeding is taken on the petition of the district council,—

to the district council : and

(c.) In every case to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

ARTICLE III.—1. The county council shall, within ten days after the making of the Order, cause a copy of any Order made by them under section nine of the Local Government Act, 1894, to be served by post in accordance with the following requirements ; that is to say,—

i. Where the Order relates to land proposed to be taken by the parish council for any purpose to which sub-section (2) of the said section applies :

A copy of the said Order shall be sent by post to the parish council.

2. Where the Order relates to land proposed to be taken for the purpose of allotments :—

i. If the proceeding is taken upon the petition under section two of the Allotments Act, 1890, of persons qualified as mentioned in that section or upon the petition of the parish council,—

to the parish council.

ii. If the proceeding is taken upon the petition of the district council,—

to the district council.

3. In every case a copy of the said Order shall be sent by post to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent. Appendix.

ARTICLE IV.—Every copy of a notice or order which in pursuance of any provision in Articles I., II., and III. is required to be sent or served by post to or upon any council or person therein mentioned shall be so sent or served by a registered letter containing such copy, and properly addressed, prepaid, and posted to such council or to such person at his usual or last known place of abode.

ARTICLE V.—The period within which a memorial by a person interested praying that an Order made under section nine of the Local Government Act, 1894, shall not become law without further inquiry may be presented to the Local Government Board shall be the period of one calendar month after the making of the said Order.

ARTICLE VI.—For the purposes of section nine of the Local Government Act, 1894, except so far as by sub-section (18), the said section is rendered applicable to a county borough, the several provisions hereinbefore mentioned of the Allotments Acts, 1887 and 1890, shall be adapted in the form and manner set forth in the schedule to this Order.

SCHEDULE.

THE ALLOTMENTS ACT, 1887.

Section 2 (2).

(2.) A county council or a district council carrying into effect an Order made under section nine of the Local Government Act, 1894, for putting in force as respects land to be taken for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement shall not under such Order acquire land for allotments save at such price or rent that in the opinion of the said council all expenses, except such expenses as are incurred in making roads to be used by the public, incurred by the said council in acquiring the land and otherwise in relation to the allotments may reasonably be expected to be recouped out of the rents obtained in respect thereof.

Section 3 (5), (6), (7) and (8).

(5.) In construing, for the purposes of section nine of the Local Government Act, 1894, the provisions of the Lands Clauses Acts as incorporated with the said section, and the provisions of the said Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, as incorporated with an Order which has been made and has become final under the said section, the Local Government Act, 1894, together with any such Order, shall be deemed to be the Special Act; and the parish council, for any purpose for which the said council are authorised to acquire land by agreement, or for any purpose in relation to which land authorised to be acquired otherwise than by agreement may be assured to the said council, and the county council carrying into effect, for such last-mentioned purpose, any such Order as is hereinbefore mentioned, and the county council or the district council carrying into effect, for the purpose of allotments, any such Order as is hereinbefore mentioned, shall respectively, as the case requires, be deemed to be the promoters of the undertaking or the company, and the word "land" in relation to any purpose for which the parish council are authorised to acquire land or in relation to allotments shall have the same meaning as in the Allotments Act, 1887.

(6.) Where land is purchased under an Order in pursuance of section nine of the Local Government Act, 1894, otherwise than by agreement the following provisions shall apply:—

(a.) The county council and the Local Government Board shall not make an Order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any

Appendix.

land the property of a railway or canal company which is or may be required for the purposes of their undertaking :

- (b.) The county council and the Local Government Board shall, in making an Order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.
- (7.) For the purpose of the hiring of land by a parish council for a purpose for which the said council are authorised to acquire land, any person, or body of persons, or body corporate authorised to sell land to the sanitary authority for the purposes of the Allotments Act, 1887, may, without prejudice to any other power of leasing, lease land to the parish council, without any fine or premium, for a term not exceeding thirty-five years.
- (8.) The county council and the Local Government Board shall not make an Order in pursuance of section nine of the Local Government Act, 1894, for purchasing any right to coal or metalliferous ore.

Section 11.

(1.) Where a parish council are of opinion that any land or any part of any land acquired by the said council by agreement in pursuance of section nine of the Local Government Act, 1894, or assured to the said council in pursuance of sub-section (14) of section nine of the Local Government Act, 1894, for a purpose for which the said council are authorised to acquire land, is no longer needed for the purpose for which the said land was acquired, or that any other land more suitable for such purpose is available and may be acquired by the said council by agreement, the said council may, with the sanction of the county council, and subject to the provisions of sub-section (2) of section eight of the Local Government Act, 1894, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(2.) Where a parish council are of opinion that any land or any part of any land assured to the said council in pursuance of sub-section (14) of section nine of the Local Government Act, 1894, for the purpose of allotments is no longer needed for such purpose, the said council may, with the sanction of the county council, and subject to the provisions of sub-section (2) of section eight of the Local Government Act, 1894, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(3.) Where a district council having carried into effect an Order which has been made and has become final under section nine of the Local Government Act, 1894, for putting in force for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, are of opinion that any land or any part of any land acquired by the said council, is no longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available and may be acquired by agreement, the said council, with the sanction of the county council, may sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(4.) The proceeds of a sale under the foregoing provisions of any land or any part of any land acquired by or assured to a parish council, and any money received by the said council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the said council in respect of the land acquired or assured as aforesaid, or for any purpose for which capital money may be applied and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may, subject to the provisions of section eight of the Local Government Act, 1894, be applied in aid of the expenses of the said council under the Local Government Act, 1894.

(5.) The proceeds of a sale under the foregoing provisions of any land or any part of any land acquired by a district council carrying into effect an Order which has been made and has become final under section nine of the Local Government Act, 1894, for putting in force for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by

agreement, shall be applied, and any surplus remaining, any interest, and any money received from the letting of the land may or shall be applied, as nearly as may be in the same manner, and with the same incidents and consequences, as if the said land had been acquired and otherwise dealt with in pursuance of the Allotments Act, 1887. Appendix.

(6.) Sections one hundred and twenty-eight to one hundred and thirty-two (both inclusive) of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands), shall apply upon any sale of any land in pursuance of the foregoing provisions; but, save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not be deemed to be incorporated in section nine of the Local Government Act, 1894, or in any order made under that section.

THE ALLOTMENTS ACT, 1890.

Section 3.

(2.) For the purpose of any business under section nine of the Local Government Act, 1894, relating to any district or parish wholly or partly situate in an electoral division, the county councillor representing that division shall, if not already appointed, be an additional member of the standing committee appointed for the purposes of the Allotments Acts, 1887 and 1890.

(3.) Any representation by a parish council under sub-section (2) of section nine of the Local Government Act, 1894, shall, as of course, and without any order of the county council, be referred to the said standing committee, who shall forthwith inquire into the circumstances, and shall report the result to the county council.

(4.) Where the county council are satisfied that the circumstances are such as to justify them in proceeding under section nine of the Local Government Act, 1894, the public inquiry mentioned in sub-section (3) of the said section shall be held by such one or more members of the said standing committee, or such officer of the county council as the said standing committee may appoint to hold the same.

Given under the Seal of Office of the Local Government Board, this
twenty-second day of May, in the year One thousand eight
hundred and ninety-five.

(L.S.)

G. SHAW-LEFEVRE, *President*.

WALTER FOSTER, *Secretary*.

CONFERENCES.

LOCAL GOVERNMENT CONFERENCES—CIRCULAR.

(14th May, 1891.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,

14th May, 1891.

SIR,—I am directed by the Local Government Board to advert to the provisions of the Public Health and Local Government Conferences Act, 1885 (48 & 49 Vict. c. 22), (a) under which any local authority within the meaning of the Public Health Act, 1875, other than the urban sanitary authority of a borough, may, when empowered by and subject to any regulations made by the Board, pay the reasonable expenses incurred by any member of the local authority or by the clerk in attending a conference or meeting of the members of the local authorities held for the purpose of discussing any matter connected with the duties devolving on them, and also any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting.

(a) *Ante*, p. 476.

Appendix. The Board have had under consideration the desirability of regulations being made under the Act referred to, and, having regard to the representations which have been made to them on the subject, they have considered it advisable to exercise their power of making regulations so far as regards conferences or meetings of members of the urban sanitary authorities to whom the Act applies.

The Board have accordingly issued an Order on the subject, which will apply to the local board of any local government district, and to the improvement commissioners of any Improvement Act district. Two copies of the Order are enclosed.

The Order provides for the payment of the reasonable expenses incurred by the representatives of a local authority to whom the Order applies in attending either at a central conference or meeting open to representatives of all local boards and improvement commissioners, or at a conference or meeting convened for an area including the district from which the representatives are sent. In the latter case, however, the conference or meeting must be held at a place not more than 100 miles from the district.

The expenses will not be payable unless at a meeting of the local authority of the district a resolution has been passed expressly authorising the attendance at the conference or meeting of a member or members, or of the clerk to the local authority. It is necessary that a written or printed notice that the proposal will be considered at the meeting shall have been sent, by post or otherwise, to each member not less than four days before the date of the meeting of the local authority; and it should be observed that, if the attendance of more than one member is to be authorised, the number must be specified in the resolution.

The Order fixes two as the maximum number of members who may be empowered to attend, and directs that in the case of a central conference only one member shall be authorised to attend from any district more than 50 miles from the place of meeting. These numbers are in addition to the clerk.

The Board have not deemed it practicable to specify the precise sum which should be allowed in respect of an attendance at a conference or meeting. The statute only admits of the expenses actually incurred being charged, and it requires that these should be reasonable. They must necessarily vary in different cases, but the Board think that in addition to the actual travelling expenses they should not exceed the following scale for each person, viz. :—

Seven shillings and sixpence per day when not absent from home at night; and
Fifteen shillings per day when absence from home is necessary.

With regard to the reports of the conferences or meetings it will be seen that the Board have left it to the local authority by resolution what number of copies they will purchase. The power of purchase extends to the reports both of a central conference or meeting, and of any conference or meeting for an area including the district.

I am, Sir, your obedient Servant,

HUGH OWEN, *Secretary.*

The Clerk to the Local Board or Improvement
 Commissioners.

LOCAL GOVERNMENT CONFERENCES—GENERAL ORDER.

(13th May, 1891.)

TO THE LOCAL BOARDS, FOR THE TIME BEING, OF THE SEVERAL
 LOCAL GOVERNMENT DISTRICTS IN ENGLAND AND WALES;—

TO THE IMPROVEMENT COMMISSIONERS, FOR THE TIME BEING, OF THE
 SEVERAL IMPROVEMENT ACT DISTRICTS IN ENGLAND AND
 WALES;—

And to all others whom it may concern.

WHEREAS section 2 of the Public Health and Local Government Conferences Act, 1885, (a) contains the following enactment:—

“Any local authority may, when empowered by and subject to any regulations

made by the Local Government Board in that behalf (which regulations the said Board is hereby authorized from time to time to make, vary, or rescind), pay the reasonable expenses of any member or members or clerk to the local authority attending any conference or meeting of members of local authorities held for the purpose of discussing any matter which is connected with the duties which devolve on them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such meeting or conference, and may charge the amount to any rates applicable to the general purposes of the Public Health Act, 1875, within their district;”

Appendix.

And whereas local boards of local government districts and improvement commissioners of Improvement Act districts are respectively local authorities within the meaning of the said Act;

Now therefore, We, the Local Government Board, do, by this, Our Order, empower the local boards of the several local government districts, and the improvement commissioners of the several Improvement Act districts, for the time being in England and Wales, to pay the reasonable expenses incurred by any member or members, or by the clerk in attending any such conference or meeting as is mentioned in the above-recited section, and any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting, subject to the following regulations:—

- (1.) The expenses incurred in attending a conference or meeting shall only be paid in respect of attendance at a central conference or meeting open to representatives of all local boards and improvement commissioners, or at a conference or meeting convened for an area including the district from which the persons attending as representatives are sent, and held at a place distant not more than one hundred miles from such district.
- (2.) The attendance at any conference or meeting of a member or members of, or of the clerk to, the local authority of any such district shall be expressly authorized by a resolution passed at a meeting of the local authority of such district, a written or printed notice that the proposal is to be considered at that meeting having been sent, by post or otherwise, to each member not less than four days prior to the date of the meeting of the local authority; and where the attendance of more than one member is authorized, the number of members authorized to attend shall be specified in the resolution.
- (3.) The maximum number of members authorized to attend any conference or meeting shall be two, and in the case of a central conference or meeting only one member shall be authorized to attend from any district which is at a distance of more than fifty miles from the place of meeting.
- (4.) The number of copies which may be purchased by the local authority of any district of the report of a central conference or meeting, or of any conference or meeting for an area including the district, shall be such as the local authority of the district may, by resolution, determine.

Given under the Seal of Office of the Local Government Board, this thirteenth day of May, in the year one thousand eight hundred and ninety-one.

(L.S.)

CHAS. T. RITCHIE, *President*.

HUGH OWEN, *Secretary*.

Appendix.

DAIRIES, COWSHEDS, AND MILKSHOPS.

THE DAIRIES, COWSHEDS, AND MILKSHOPS ORDER OF 1885.

(15th June, 1885.)

At the Council Chamber, Whitehall, the 15th day of June, 1885.

By Her Majesty's most Honourable Privy Council. Present:—Lord President Mr. Trevelyan.

The Lords and others of Her Majesty's most Honourable Privy Council, by virtue and in exercise of the powers in them vested under the Contagious Diseases (Animals) Act, 1878,^(a) and of every other power enabling them in this behalf, do order, and it is hereby ordered, as follows:—

- Short title. I. This Order may be cited as the Dairies, Cowsheds, and Milkshops Order of 1885.^(b)
- Extent. II. This Order extends to England and Wales and Scotland only.
- Commencement. III. This Order shall commence and take effect from and immediately after the 30th day of June, one thousand eight hundred and eighty-five.
- Interpretation. IV. In this Order—
The Act of 1878 means the Contagious Diseases (Animals) Act, 1878. Other terms have the same meaning as in the Act of 1878.^(c)
- Revocation of former Order. V. The Dairies, Cowsheds, and Milkshops Order of July, 1879, is hereby revoked: Provided that nothing in this Order shall be deemed to revive any Order of Council thereby revoked, or to invalidate or make unlawful anything done before the commencement of this Order, or interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty incurred under, the said Order hereby revoked.
- Registration of dairymen and others. VI. (1.) It shall not be lawful for any person to carry on in the district of any local authority the trade of cowkeeper, dairyman, or purveyor of milk,^(d) unless he is registered as such therein in accordance with this article.^(e)

(a) 41 & 42 Vict. c. 74, s. 34, *ante*, p. 487 note (a).

(b) This Order is now to be deemed to have been made by the Local Government Board. 49 & 50 Vict. c. 32, s. 9, sub-sect. (6), *ante*, p. 487.

(c) Except that the Local Government Board is substituted for the Privy Council, and the local authority referred to throughout the Order means the urban and rural sanitary authorities throughout the country. 49 & 50 Vict. c. 32, s. 9, sub-sects. (1), (2). See also Art. 14, *post*, and the note thereto.

(d) The term purveyor of milk is here used as distinct from cow-keeper or dairyman, while in Arts. 9, 13, it is used as distinct from the occupier of a milkstore or shop. The question may, therefore, arise whether the person who merely keeps a milkstore or milkshop requires to be registered as a purveyor of milk. If he does, and if such a person is included in the term, it is difficult to see why in Art. 13 of the Order the trades of purveyor of milk and of milkshop or storekeeper are both mentioned. On the other hand, one would imagine that milkshops and stores were as much within the mischiefs provided against, or some of them, as dairies and cowsheds. The construction of the Order on this point must be admitted to be doubtful. It is submitted, however, that the term "purveyor of milk" is wide enough to cover the keeper of a milkstore or shop. The term is not used in the Act, as it is in Art. 13 of the Order, side by side with that of "the occupier of a milkstore or milkshop." On the contrary, it is rather to be inferred from 41 & 42 Vict. c. 74, section 34, sub-section iii., *ante*, p. 488, that the milkstores and shops therein mentioned are stores and shops kept by dairymen, cowkeepers, and purveyors of milk. It was held, in a Scotch case, that an ice cream manufacturer, though he used milk in the manufacture of his ice creams, was not a purveyor of milk within the meaning of this regulation. *Lang v. Pianta*, 21 Ct. Sess. Cas., 4th series, J. C. 20; 31 Scottish Law Reporter, p. 335, Adams, Just. Cas. 230. In Ireland it has been held that regulations made by a local authority, under the Contagious Diseases (Animals) Acts, 1878 and 1886, and the Dairies, &c. (Ireland) Order, 1886, do not require confirmation by the Local Government Board for Ireland, and that a regulation prescribing the removal of manure from cowsheds at intervals not exceeding seven days was authorized by the Acts and Order. *Dublin (Lord Mayor, &c. of) v. Menton*, 30 L. R. Ir. 451.

(e) As to the penalty for a breach of this article, see Order of 1st November, 1886, *post*.

(2.) Every local authority shall keep a register of persons from time to time carrying on in their district the trade of cowkeepers, dairymen, or purveyors of milk, and shall from time to time revise and correct the register. *(f)* Appendix.

(3.) The local authority shall register every such person *(g)* but the fact of such registration shall not be deemed to authorize such person to occupy as a dairy or cowshed any particular building or in any way preclude any proceedings being taken against such person for non-compliance with or infringement of any of the provisions of this Order or any regulation made thereunder.

(4.) The local authority shall, from time to time, give public notice by advertisement in a newspaper circulating in their district, and, if they think fit, by placards, handbills, or otherwise, of registration being required, and of the mode of registration. *(h)*

(5.) A person who carries on the trade of cowkeeper or dairyman for the purpose only of making and selling butter or cheese, or both, and who does not carry on the trade of purveyor of milk, shall not, for the purposes of registration, be deemed to be a person carrying on the trade of cowkeeper or dairyman, and need not be registered. *(i)*

(6.) A person who sells milk of his own cows in small quantities to his workmen or neighbours, for their accommodation, shall not, for the purposes of registration, be deemed, by reason only of such selling, to be a person carrying on the trade of cowkeeper, dairyman, or purveyor of milk, and need not, by reason thereof, be registered. *(k)*

VII. (1.) It shall not be lawful for any person following the trade of cow-keeper or dairyman to begin to occupy as a dairy or cow-shed any building not so occupied at the commencement of this Order, unless and until he first makes provision, to the reasonable satisfaction of the local authority, for the lighting and ventilation, including air-space, and the cleansing, drainage, and water-supply of the same, while occupied as a dairy or cowshed. Construction of water-supply of new dairies and cow-sheds.

(2.) It shall not be lawful for any such person to begin so to occupy any such building without first giving one month's notice in writing to the local authority of his intention so to do. *(l)*

VIII. It shall not be lawful for any person following the trade of cow-keeper or dairyman to occupy as a dairy or cow-shed any building, whether so occupied at the Sanitary state of all dairies and cow-sheds. *(m)*

(f) As to the transfer of the old register, see 49 & 50 Vict. c. 32, s. 9, sub-sect. (6), *(b)*, *ante*, p. 487.

(g) Note that the local authority cannot refuse to register any person applying for that purpose; but such registration does not afford any protection in respect of the keeping of a dairy, &c., in such a way as to contravene the provisions of the Order in other respects, or of any regulations made under it.

(h) Forms of Regulation have been prepared and published by Messrs. Shaw and Sons, of Fetter Lane, which may be used in compliance with this requirement.

(i) See as to the meaning of the term "purveyor of milk," note *(d)*, *ante*, p. 1422. There must apparently be a supplying or selling of milk in order to necessitate registration.

(k) This exception appears to extend to all persons who sell milk otherwise than as part of their trade or business. The object of registration is to secure supervision of all persons whose business consists wholly or in part of supplying or selling milk. Thus, a person who keeps one or two cows for the supply of milk for his own household does not require to be registered merely because he sells his surplus milk to his neighbours. On the other hand, a person who keeps cows for the purpose of selling his milk must be registered. It may be difficult, in some cases, to decide whether a person is entitled to the benefit of this exemption.

A farmer who kept cows for the supply of his family and for amusement, and who occasionally allowed his neighbours and a dairyman to have a few quarts of milk, was held not to be a cowkeeper or dairyman within the corresponding provision of the repealed Order of 1879. *Southwell v. Lewis*, 45 J. P. 206.

(l) This article applies only to new dairies and cow-sheds. It does not apply to dairies and cow-sheds already occupied. The several requirements of the article should be carefully noticed.

(m) This article applies both to old and to new dairies and cow-sheds. It is presumably for the local authority to decide whether the lighting, ventilation, &c., are reasonable and proper. The regulations made under Article 13 should prescribe what the local authority consider reasonable and proper.

Appendix.

commencement of this Order or not, if and as long as the lighting, and the ventilation, including air-space, and the cleansing, drainage, and water supply thereof are not such as are necessary or proper—

- (a.) For the health and good condition of the cattle therein; and
- (b.) For the cleanliness of milk-vessels used therein for containing milk for sale; and
- (c.) For the protection of the milk therein against infection or contamination.

Contamination
of milk.

IX. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-shop—(a)

- (a.) To allow any person suffering from a dangerous infectious disorder, (b) or having recently been in contact with a person so suffering, to milk cows or to handle vessels used for containing milk for sale, or in any way to take part or assist in the conduct of the trade or business of the cow-keeper or dairyman, purveyor of milk, or occupier of a milk-store or milk-shop, so far as regards the production, distribution, or storage of milk; or
- (b.) If himself so suffering or having recently been in contact as aforesaid, to milk cows, or handle vessels used for containing milk for sale, or in any way to take part in the conduct of his trade or business, as far as regards the production, distribution, or storage of milk—

until in each case all danger therefrom of the communication of infection to the milk or of its contamination has ceased. (c)

X. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop, after the receipt of notice of not less than one month from the local authority calling attention to the provisions of this article, to permit any water-closet, earth-closet, privy, cesspool, or urinal to be within, communicate directly with, or ventilate into, any dairy or any room used as a milk-store or milk-shop. (d)

XI. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop to use a milk-store or milk-shop in his occupation, or permit the same to be used as a sleeping apartment, or for any purpose incompatible with the proper preservation of the cleanliness of the milk-store or milk-shop, and of the milk-vessels and milk therein, or in any manner likely to cause contamination of the milk therein.

XII. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk to keep any swine in any cow-shed or other building used by him for keeping cows, or in any milk-store or other place used by him for keeping milk for sale.

XIII. A local authority may from time to time make regulations for the following purposes, or any of them:—(f)

- (a.) For the inspection of cattle in dairies.
- (b.) For prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cow-sheds in the occupation of persons following the trade of cow-keepers or dairymen.

(a) The purveyor of milk is here mentioned as if he were a distinct person from the mere retail seller. But see the observations in note (d), *ante*, p. 1422.

(b) Note the word *dangerous*. It means, apparently, dangerous to life, and applies to such diseases as small-pox, scarlet fever, and the like. It probably also applies to measles.

(c) It will be prudent in all cases to obtain medical advice as to whether the danger has ceased.

(d) Notice under this article must proceed from the local authority. Notice from an officer will not be sufficient unless first directed to be given by the local authority. See *St. Leonard's, Shoreditch v. Holmes*, 50 J. P. 132. The notice should be in writing, though the text does not so require, in order that there may be no dispute as to its terms should legal proceedings be afterwards founded upon it.

(e) Model Regulations have been prepared and published by Shaw and Sons, Fetter Lane, E.C.

(f) These regulations do not require confirmation, except as provided by the next article. They should be adopted by resolution, and the resolution should be entered on the Minutes. The regulations should be identified by the Minute, and sealed with the seal of the local authority.

Regulations of
local authority. (e)

- (c.) For securing the cleanliness of milk-stores, milk-shops, and of milk vessels used for containing milk for sale by such persons. **Appendix.**
 (d.) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination.(g)

XIV. The following provisions shall apply to regulations made by a local authority under this Order:— **Provisions as to regulations of local authority.**

- (1.) Every regulation shall be published by advertisement in a newspaper circulating in the district of the local authority.(h)
 (2.) The local authority shall send to the Privy Council(i) a copy of every regulation made by them not less than one month before the date named in such regulation to come into force.
 (3.) If at any time the Privy Council(i) are satisfied on inquiry, with respect to any regulation, that the same is of too restrictive a character, or otherwise objectionable, and direct the revocation thereof, the same shall not come into operation, or shall thereupon cease to operate, as the case may be.

XV. If at any time disease(k) exists among the cattle in a dairy or cow-shed, or other building or place, the milk of a diseased cow therein— **Existence of disease among cattle.**

- (a.) Shall not be mixed with other milk; and
 (b.) Shall not be sold or used for human food; and
 (c.) Shall not be sold or used for food of swine or other animals, unless and until it has been boiled.

XVI. (1.) All orders and regulations made by a local authority under The Dairies, Cow-sheds, and Milk-shops Order of July, 1879, or any Order revoked thereby, and in force at the making of this Order shall, as far as the same are not varied by or inconsistent with this Order, remain in force until altered or revoked by the local authority. **Acts of local authorities.**

(2.) Forms of Registers and other forms which have been before the making of this Order prepared for use by a local authority under The Dairies, Cow-sheds, and Milk-shops Order of July, 1879, or any Order revoked thereby, may be used, as far as they are suitable, for the purposes of this Order.

XVII. Nothing in this Order shall be deemed to interfere with the operation of Scotland. the Cattle Sheds in Burghs (Scotland) Act, 1866.

DAIRIES, COWSHEDS, AND MILKSHOPS—CIRCULAR (TOWN COUNCILS).

(3rd November, 1886.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

3rd November, 1886.

SIR,—I am directed by the Local Government Board to advert to section 9 of the Contagious Diseases (Animals) Act, 1886,(l) which has transferred to the Board certain powers relating to the regulation of dairies, cow-sheds, and milk-shops, formerly exercised by the Privy Council under the Contagious Diseases (Animals) Act, 1878, hereinafter referred to as “the principal Act.”

The section in question has provided that the powers vested in the Privy Council of making general or special Orders under section 34 of the principal Act(m) shall

(g) The regulations should also provide for the imposing of penalties. See the note to 49 & 50 Vict. c. 32, s. 9, sub-sect. (5), *ante*, p. 487.

(h) It may be advisable also to publish them by placards.

(i) Now the Local Government Board. See the Order of 1st November, 1886, *post*.

(k) The word “disease” has the meaning assigned to it by the Act of 1878 (see Article 4 of this Order, *ante*, p. 1422); it, therefore, means only cattle plague, pleuro-pneumonia, and foot and mouth disease.

(l) *Ante*, p. 486.

(m) *Ante*, p. 487, note (a).

Appendix. henceforth be exerciseable by the Board, who may from time to time alter or revoke any such Order; and that for the purposes of the two sections and of any Order in force thereunder, the expression "local authority" (unless the context otherwise requires) shall, outside the metropolis, have the same meanings as in the Public Health Act, 1875, in other words shall mean the urban or rural sanitary authority.

As the sanitary authority are aware, the Privy Council, on the 15th June, 1885, made an Order known as "The Dairies, Cow-sheds, and Milk-shops Order of 1885."^(a) This Order and any regulations thereunder, or having effect in pursuance thereof, made by any local authority under the principal Act other than the local authority of a county, are now to be deemed to have been made respectively by the Board, and outside the metropolis, by the sanitary authority of the district.

It is provided by Article 14 of the Order of 1885, that regulations made by a local authority under Article 13 of that Order, shall be sent to the Privy Council, and that if, at any time, the Privy Council are satisfied on inquiry with respect to any such regulation that the same is of too restrictive a character, or otherwise objectionable, and direct the revocation thereof, the same shall not come into operation, or shall thereupon cease to operate, as the case may be.

The Board are advised that in the absence of an Order amending the Order of 1885, regulations made by a local authority would have to be sent to the Privy Council, and that the power conferred by Article 14 would still be exerciseable by that department and not by the Board. As it is not intended that this should be the case, the Board, in pursuance of section 9 of the Act of 1886, have issued an Order, two copies of which are enclosed, substituting the words "Local Government Board," for the words "Privy Council," in Article 14 of the Order of 1885. Hence all regulations made by local authorities in future under that Order, must be sent to the Board and not to the Privy Council.

The Board are further advised that it is doubtful whether the penalties imposed by the principal Act for offences against that Act, are, since the passing of the Act of 1886, applicable to an offence against the Order of 1885. In these circumstances the Board have deemed it advisable to exercise the power conferred upon them by sub-section (5) of section 9 of the Act of 1886, and they have therefore, by the Order which they have now issued, imposed penalties for offences against the Order of 1885.

It will be observed that the penalties so imposed are those which under section 183 of the Public Health Act, 1875,^(b) may be imposed by any sanitary authority for offences against bye-laws made by them under that Act. This is in accordance with the requirements of sub-section (5) of section 9 of the Act of 1886.

It may be added that any expenses incurred by the sanitary authority in pursuance of section 34 of the principal Act, as amended by section 9 of the Act of 1886, are to be defrayed as if they were incurred in the execution of the Public Health Act, 1875; and that for the purpose of enforcing Orders under section 34 of the principal Act, and any regulations made thereunder, the sanitary authority and their officers have the same right to be admitted to any premises as they have under section 102 of the Public Health Act, 1875,^(c) for the purpose of examining as to the existence of nuisances.

I am, Sir, your obedient Servant,
HUGH OWEN, *Secretary.*

The Clerk to the Sanitary Authority.

^(a) *Ante*, p. 1422.

^(b) *Ante*, p. 257.

^(c) *Ante*, p. 124.

THE DAIRIES, COWSHEDS, AND MILKSHOPS AMENDING ORDER,
1886.

Appendix.

(1st November, 1886.)

To THE MAYOR AND COMMONALTY AND CITIZENS of the City of London, acting by the Mayor, Aldermen, and Commons of that City in Common Council assembled;—

To the Metropolitan Board of Works;—

To the several Urban and Rural Sanitary Authorities for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by section 34 of the Contagious Diseases (Animals) Act, 1878(*d*) (hereinafter referred to as “the principal Act”), it was enacted that Her Majesty’s most Honourable Privy Council (hereinafter referred to as “the Privy Council”) might from time to time make such general or special Orders as they should think fit, subject and according to the provisions of the Act, for the purposes specified in that section;

And whereas on the 15th day of June, 1885, the Privy Council, in pursuance of the powers vested in them by the principal Act, made a general Order known as “The Dairies, Cow-sheds, and Milk-shops Order of 1885”(*e*) (hereinafter referred to as “the Order of 1885”); and such Order extends to the whole of England and Wales;

And whereas by Article 14 of the Order of 1885 it is provided that a copy of every regulation therein referred to shall be sent to the Privy Council, and that if at any time the Privy Council are satisfied on inquiry with respect to any regulation that the same is of too restrictive a character, or otherwise objectionable, and direct the revocation thereof, the same shall not come into operation, or shall thereupon cease to operate, as the case may be;

And whereas by section 9 of the Contagious Diseases (Animals) Act, 1886(*f*) (hereinafter referred to as “the Act of 1886”), it is enacted as follows:—

“(1.) The powers vested in the Privy Council of making general or special Orders under section thirty-four of the principal Act, for the purposes in that section mentioned, are hereby transferred to and shall henceforth be exercisable by the Local Government Board; every such Order shall have effect as if enacted in this section, and shall be published in such manner as the Local Government Board may direct, and the said Board may from time to time alter or revoke any such Order.”

“(2.) For the purposes of the said section and this section, and of any Order in force thereunder, the expression local authority, unless the context otherwise requires, in the metropolis has the same meanings as in the principal Act, and elsewhere has the same meanings as in the Public Health Act, 1875.”

* * * * *

“(5.) The like penalties for offences against orders or regulations made for the purposes of section 34 of the principal Act as amended by this section may be imposed by the Local Government Board or local authority making the same, and such offences may be prosecuted and penalties recovered in a summary manner, and subject to the like provisions, as if such orders or regulations were byelaws of a local authority under the Public Health Act, 1875, and as if the local authority mentioned in that Act included a local authority in the metropolis as defined in this section.”

“6 (*a*.) The Dairies, Cowsheds, and Milkshops Order of 1885, and any regulations thereunder, or having effect in pursuance thereof, made by any local authority under the principal Act, other than the local authority of a county, shall be deemed to have been made respectively by the Local Government Board and by a local authority under this section.”

And whereas it is expedient that the Order of 1885 should be altered as hereinafter mentioned, and that penalties should be imposed for offences against such Order:

(*d*) *Ante*, p. 487, note (*a*).(*e*) *Ante*, p. 1422.(*f*) *Ante*, p. 486.

Appendix. Now therefore, We, the Local Government Board, in pursuance of the powers vested in Us by the Act of 1886, hereby order as follows:—

ART. 1.—This Order may be cited as “The Dairies, Cow-sheds, and Milk-shops Amending Order of 1886.”

ART. 2.—Art. 14 of the Order of 1885 shall be altered by the substitution therein of the words “Local Government Board” for the words “Privy Council” occurring therein.

ART. 3.—If any person is guilty of an offence against the Order of 1885, he shall for every such offence be liable to a penalty of five pounds, and in the case of a continuing offence to a further penalty of forty shillings for each day after written notice of the offence from the local authority.

Provided, nevertheless, that the justices or court before whom any complaint may be made, or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this Order.

ART. 4.—In this Order the expression “local authority” means—

In the City of London and the liberties thereof, the mayor and commonalty and citizens of the City of London acting by the mayor, aldermen, and commons of that city in common council assembled:

In the Metropolis, except the City of London and the liberties thereof, the Metropolitan Board of Works:

Elsewhere than in the Metropolis, the urban or rural sanitary authority.

Given under the Seal of Office of the Local Government Board, this first day of November, in the year one thousand eight hundred and eighty-six.

(L.S.)

CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

Date of publication in the *London Gazette*, 2nd November, 1886.

DAIRIES, COWSHEDS, AND MILKSHOPS (SANITARY AUTHORITIES, OTHER THAN TOWN COUNCILS, WHERE NO DAIRY REGULATIONS ARE IN FORCE)—CIRCULAR.

(7th March, 1889.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
7th March, 1889.

SIR,—I am directed by the Local Government Board to advert to their circular letter of the 20th October, 1886, in which they drew the attention of the sanitary authority to section 9 of the Contagious Diseases (Animals) Act, 1886,^(a) which transferred to the Board and to urban and rural sanitary authorities in their several districts, respectively, certain powers relating to the regulation of dairies, cowsheds, and milkshops, formerly exercised by the Privy Council and the local authorities acting under the Contagious Diseases (Animals) Act, 1878.

Amongst the powers thus transferred was that given by Article 13 of the Dairies, Cowsheds, and Milkshops Order of 1885,^(b) issued by the Privy Council, and the effect was to enable every urban and rural sanitary authority from time to time to make regulations for the following purposes, or any of them:—

- (a) For the inspection of cattle in dairies;
- (b) For prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen;
- (c) For securing the cleanliness of milk-stores, milk-shops, and of milk vessels used for containing milk for sale by such persons;
- (d) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination.

(a) *Ante*, p. 486.

(b) *Ante*, p. 1424.

Moreover, section 9 (5) of the Act of 1886 provided that penalties might be imposed for offences against such regulations. **Appendix.**

As the Board pointed out in the letter above referred to, the regulations made by a county authority under the Dairies, Cowsheds, and Milkshops Order of 1885, or under previous Orders of the Privy Council, so far as they extend to the district of any particular sanitary authority, are to be deemed to have been made by such authority. This provision, however, applies only to counties where there were regulations in force at the passing of the Act of 1886, and in the present instance the Board find that, at the time of the passing of the Act, there were no regulations in force in the county in which the district of the sanitary authority is situate.

By Article 14 (2) of the Order of 1885,^(c) above mentioned, as amended by the Dairies, Cowsheds, and Milkshops Amending Order of 1886, a copy of every regulation made by the sanitary authority is required to be sent to the Board "not less than one month before the date named in such regulation for the same to come into force."

The Board have not received a copy of any regulation or series of regulations made by the sanitary authority on the subject in question, and they infer, therefore, that no such regulations have been made. Under these circumstances, the Board are desirous of impressing upon the sanitary authority the importance of exercising the powers conferred upon them in this matter by Article 13 of the Order of 1885, and of urging them to take steps to frame regulations for their district.

The Board may add that model regulations have been issued by Messrs. Knight & Co., 90, Fleet Street, E.C., Messrs. Shaw & Sons, Fetter Lane, E.C., and Messrs. Hadden, Best & Co., West Harding Street, E.C., and the Board would suggest that the sanitary authority should base their regulations on one of these series.

A draft of any regulations proposed to be made by the sanitary authority should be sent to the Board before they are adopted.

I am, Sir, your obedient Servant,

HUGH OWEN, *Secretary.*

To the Clerk to the Sanitary Authority.

DISEASES^(d) AND HOSPITALS.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889—FORM OF CERTIFICATE UNDER SECTION 4 (1)—GENERAL ORDER.

(12th September, 1889.)

TO THE COMMISSIONERS OF SEWERS IN THE CITY OF LONDON;—

To the Vestries and District Boards for the time being acting under the Metropolis Management Act, 1855, or any Act amending the same;—

To the Woolwich Local Board of Health;—

To the several other Local Authorities in England to whose Districts the Infectious Disease (Notification) Act, 1889, shall from time to time extend;—

And to all others whom it may concern.

WHEREAS by sub-section (1) of section 3 of the Infectious Disease (Notification) Act, 1889,^(e) it is, amongst other things, enacted that where an inmate (hereinafter

(c) *Ante*, p. 1425.

(d) And see *tit.* "Cholera," *ante*, p. 1399.

(e) *Ante*, p. 539.

Appendix

referred to as "the patient") of any building used for human habitation within a district to which the Act extends is suffering from an infectious disease to which the Act applies, then, unless such building is a hospital in which persons suffering from an infectious disease are received, every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which the Act applies, send to the medical officer of health for the district a certificate stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering;

And whereas by sub-section (1) of section 4 of the said Act(a) it is enacted that "The Local Government Board may from time to time prescribe forms for the purpose of certificates under this Act, and any forms so prescribed shall be used in all cases to which they apply":

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this our Order, prescribe and order as follows:—

The Form of Certificate contained in the Schedule hereto shall, until We otherwise prescribe, be the form for the purpose of any certificate to be given under sub-section (1) (b) of section 3 of the Infectious Disease (Notification) Act, 1889.

SCHEDULE.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

CERTIFICATE OF MEDICAL PRACTITIONER.

* _____

To the Medical Officer of Health.

I hereby certify and declare, that in my opinion† _____ an inmate of‡
is suffering from§ _____

Dated the _____ day of _____, 18 _____.
(Signed) _____ Medical Practitioner.

N.B.—This certificate must (under a penalty not exceeding forty shillings) be sent to the medical officer of health forthwith on the medical practitioner attending on or called in to visit the patient becoming aware that the patient is suffering from an infectious disease to which the Act applies; namely, any of the following diseases:—Small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names: typhus, typhoid, enteric, relapsing, continued or puerperal, and also any infectious disease to which the Act has been applied by the local authority in manner provided by the Act.

Given under the Seal of Office of the Local Government Board, this
twelfth day of September, in the year, one thousand eight
hundred and eighty-nine.

(L.S.) CHAS. T. RITCHIE, *President*.

HUGH OWEN, *Secretary*.

* Insert the name of the district of the local authority.

† Name in full of person suffering from disease.

‡ No. or name of the house, and name of the street or road, and parish or place, where person is resident. In the case of a ship, boat, tent, van, shed, or other similar structure, the name or description of the dwelling, and the name of the place where it is situate should be given.

§ Name of disease.

THE INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889—CERTIFICATES
OF MEDICAL PRACTITIONERS—MEMORANDUM.(b)

(13th September, 1889.)

Every medical practitioner attending on or called in to visit a patient, on becoming aware that the patient is suffering from an infectious disease to which the Act applies, must, in the following cases, forthwith send to the medical officer of health for the district a certificate in the form prescribed by the Local Government Board (sects. 3, 4):—

The certificate is to be given in respect of a case of infectious disease to which the Act applies occurring in any building, not belonging to Her Majesty, used for human habitation, unless such building is a hospital in which persons suffering from an infectious disease are received (sect. 3 (1)); and also in a case occurring in any ship, vessel, or boat not belonging to Her Majesty or to a foreign government, or in any tent, van, shed, or similar structure used for human habitation and not belonging to Her Majesty, in like manner as nearly as may be as if it were a building (sects. 13 and 15).

The penalty for default in sending the certificate is a fine not exceeding 40s. (sect. 3).

The forms of certificates are to be supplied gratuitously by the local authority, who will also pay for every certificate sent by a medical practitioner in accordance with the requirements of the Act a fee of 2s. 6d., if the case occurs in the course of his private practice, or a fee of 1s. if the certificate is given in respect of a case occurring in his practice as a medical officer of any public body or institution (sect. 4 (2)).

Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he will be entitled to the fees to which he would be entitled if he were not such medical officer (sect. 11).

If more than one medical officer of health is appointed by the local authority the certificate is to be sent to the medical officer in charge of the area in which the case occurs, unless the local authority otherwise direct (sect. 4 (3)).

A certificate may be sent to a medical officer of health by being delivered to the officer or being left at his office or residence, or may be sent by post addressed to him at his office or residence (sect. 8 (2)).

EPIDEMIC DISEASE—MEMORANDUM.

(26th August, 1892.)

1. Wherever there is prevalence or threatening of cholera, diphtheria, fever, or any other epidemic disease, it is of more than common importance that the statutory powers conferred upon sanitary authorities for the protection of the public health should be well exercised by those authorities, acting with the advice of their medical officers of health.

2. Proper precautions are equally requisite for all classes of society. But it is chiefly with regard to the poorer population, therefore chiefly in the courts and alleys of towns, and at the labourers' cottages of country districts, that local authorities are called upon to exercise vigilance, and to proffer information and advice. Common lodging-houses, and houses which are sub-let in several small holdings, always require particular attention.

3. Wherever there is accumulation, stink, or soakage of house refuse, or of other decaying animal or vegetable matter, the nuisance should as promptly as possible be abated, and precaution should be taken not to let it recur. Especially examination should be made as to the efficient working of sewers and drains, and any defect

(b) The Local Government Board suggest that a copy of this Memorandum should accompany each supply of forms of certificates by the local authority to any medical practitioner.

Appendix. therein, and any nuisance therefrom or from any foul ditches or ponds, should be got rid of without delay. The ventilation of sewers, the ventilation and trapping of house drains, and the disconnexion of cistern overflows and sink pipes from drains should be carefully seen to. The scavenging of the district, and the state of receptacles for excrement and of ash-pits or dust-bins, will require close attention. In slaughter-houses, and wherever animals are kept, strict cleanliness should be enforced.

4. In the removal of filth during periods of epidemic disease, it is commonly necessary to employ chemical agents for reducing or removing the offence and harm which may be involved in the disturbance of the filth. In the removal of privy contents these agents are more particularly wanted if the disease in question be cholera or enteric fever. The chemical agent should be used liberally over all exposed surfaces from which filth has been removed. Unpaved earth close to dwellings, if it be sodden with slops or filth, ought to be treated in the same way.

5. Sources of water-supply should be well examined. Water from sources which can be in any way tainted by animal or vegetable refuse, especially those into which there may be any leakage or filtration from sewers, drains, cesspools, or foul ditches, ought no longer to be drunk. Above all, where the disease is cholera, diarrhoea, or enteric fever, it is essential that no impure water be drunk.

The liability of leaky water pipes to act as land drains and to receive foul matters as well as land drainage through their leaks is not to be overlooked. And such leaky pipes, running full of water with considerable velocity, are liable to receive, by lateral insuction at their points of leakage, external matters that may be dangerous. This latter fact is not recognised so generally as it should be; and ignorance of it has probably baffled many inquiries in cases where water services have in truth been the means of spreading disease.

If, unfortunately, the only water which for a time can be got should be open to suspicion of dangerous organic impurity, it ought at least to be boiled before it is used for drinking, but then not to be drunk later than twenty-four hours after it has been boiled. Filtering of the ordinary kind cannot by itself be trusted to purify water. It cannot be too distinctly understood that dangerous qualities of water are not obviated by the addition of wine or spirits.

6. When there appears any probable relation between the distribution of disease and of milk supplies, the cleanliness of dairies, the purity of the water used in them, the health of the persons employed about them, and the health of the cows that furnish milk should always be carefully investigated. Even apart from any apprehension of milk being concerned in a particular outbreak of disease, it is desirable that English people should adopt the custom, which is always followed in some continental countries, of boiling all milk at once upon its reception into a house.

7. The washing and lime-whiting of uncleanly premises, especially of such as are densely occupied, should be pressed with all practicable despatch.

8. Overcrowding should be prevented. Especially where disease has begun, the sick-room should, as far as possible, be free from persons who are not of use to the patient.

Ample ventilation should be enforced. It should be seen that windows are made to open, and that they are sufficiently opened. Especially where any kind of infective fever has begun, it is essential, both for patients and for persons who are about them, that the sick-room and the sick-house be constantly traversed by streams of fresh air.

9. The cleanliest domestic habits should be enjoined. Refuse matters should be speedily removed or destroyed; and things which have to be disinfected or cleansed should always be disinfected or cleansed without delay.

10. Special precautions of cleanliness and disinfection are necessary with regard to infective matters discharged from the bodies of the sick. Among discharges which it is proper to treat as infective are those which come in cases of small-pox and scarlatina from the affected skin; in cases of cholera and enteric fever from the intestinal canal; in cases of diphtheria and scarlatina from the nose and throat; likewise, in cases of any eruptive or other epidemic fever, the general exhalations of the sick. The caution which is necessary with regard to such matters must, of course, extend to whatever is imbued with them; so that bedding, clothing, towels, handkerchiefs, and other articles which have been in use by the sick may not become sources of mischief, either in the house to which they belong or in houses to which

they are conveyed. So far as articles of this class can be replaced by rags or things of small value, it is best to use such things and burn them when they are soiled. Otherwise clothing and infected articles should be subjected to the disinfectant of the sick room or be removed for disinfection by heat.

In enteric fever and cholera the evacuations should be regarded as capable of communicating an infectious quality to any nightsoil with which they are mingled in privies, drains, or cesspools; and after such disinfection of them as is practicable, they should be disposed of without delay and under the safest conditions that local circumstances permit. They should not be thrown into any fixed privy receptacle, and above all, they must never be cast where they can run or soak into sources of drinking water.

11. All reasonable care should be taken not to allow infective disease to spread by the unnecessary association of sick with healthy persons. This care is requisite, not only with regard to the sick house, but likewise with regard to schools and other establishments wherein members of many different households are accustomed to meet.

12. If disease begins in houses where the sick person cannot be properly accommodated and tended, medical advice should be taken as to the propriety of removing him to an infirmary or hospital. Every sanitary authority should have in readiness a hospital for the reception of such cases.

Where dangerous conditions of residence cannot be promptly remedied, it will be best that the inmates, while unattacked by disease, remove to some safer lodging.

13. Privation, as predisposing to disease, may require special measures of relief.

14. In certain cases special medical arrangements are necessary. For instance, as cases of cholera in this country sometimes begin somewhat gradually in the comparatively tractable form of what is called "premonitory diarrhoea," it is essential that, where cholera has appeared, arrangements should be made for affording medical relief without delay to persons attacked, even slightly, with looseness of bowels. So, again, where small-pox is the prevailing disease, it is essential that all unvaccinated persons (unless they previously have had small-pox) should very promptly be vaccinated; and that re-vaccination should be performed in cases properly requiring it.

15. It is always to be desired that the people should, as far as possible, know what real precautions they can take against the disease which threatens them, what vigilance is needful with regard to its early symptoms, and what (if any) special arrangements have been made for giving medical assistance within the district. For the purpose of such information, printed hand-bills or placards may usefully be employed, and in cases where danger is great, house-to-house visitation by discreet and competent persons may be of the utmost service, both in quieting unreasonable alarm and in leading or assisting the less educated and the destitute parts of the population to do what is needful for safety.

16. The present memorandum relates to occasions of emergency. Therefore the measures suggested in it are essentially of an extemporaneous kind; and permanent provisions for securing the public health have, in express terms, been but little insisted on. It is to be remembered, however, that in proportion as a district is habitually well cared for by its sanitary authority, the more formidable emergencies of epidemic disease are not likely to arise in it.

17. Provision by the public authority for disinfection by heat of bulky articles, and of those which cannot without injury be exposed to chemical agencies, ought always to be in readiness. Without such provision no complete disinfection can be effected. Partial and nominal disinfection, besides being wasteful, may be mischievous, as giving rise to a false security.

18. The following system of domestic disinfection may be commended to sanitary authorities who have already provided adequate public means for the disinfection and for the disposal of infected matters and things:—

(a.) For the purposes of the sick room, such as the reception of soiled handkerchiefs, sheets, and the like, as well as for the swabbing of floors, a valuable disinfecting solution may be made with perchloride of mercury. It is well to have this solution slightly acid, coloured also in such a way that it shall not readily be confused with drinks or medicines; and proper caution should be given to avoid accidents in its use. Sanitary authorities

Appendix.

Appendix.

- will find it advantageous to have such a solution* prepared under the direct instructions of the medical officer of health, and supplied of a uniform strength at the infected house upon the order of that officer.
- (b.) In places provided with proper systems of excrement disposal, excrements of cholera and enteric fever, after being treated in detail with the same disinfecting solution in ample quantity, may be safely put into the ordinary closet; but special care as to the flushing of drains and sewers, and special frequency in the removal and exchange of excrement receptacles, will commonly be wanted. Where the only closet is one that communicates with a cesspool or privy pit, the best arrangement for the disposal of infected stools that under these improper local circumstances may be found practicable will have to be adopted.
 - (c.) A substance generally available in the removal of filth from privies and ashpits, and for application to foul earth and the like,† is sulphate of iron (green copperas), either in a strong solution made by stirring crystals of the salt with five or ten times their bulk of hot water, or in the form of powder, to which form the crystals may be readily brought after desiccation. This agent should be used in quantity sufficient to destroy all odour, and in the removal of filth accumulations it should be well mixed with successive layers of the matter to be removed. The dry form of application is to be preferred where masses of wet or semi-solid filth have to be dealt with.
 - (d.) For disinfection of the air of rooms, after the room has been prepared by the removal of persons, and of such articles as are best disinfected by heat, and by the closing of windows and crevices, sulphurous acid gas in ample quantity may be evolved, the doors being kept closed for six hours or more. The amount of sulphurous acid required for the disinfection of a moderate sized room can be obtained by burning $1\frac{1}{2}$ lbs. of sulphur (roll brimstone) in a pipkin over a small fire placed in the middle of a room, with an old tray or the like to protect the flooring. These processes should be effected by skilled persons acting under the directions of the medical officer of health.
 - (e.) After measures of disinfecting a room have been taken, all wall paper should be stripped from the walls and be burned, and the room ought to have its ceilings and walls thoroughly washed or lime whitened.

19. For detailed information on disinfection by heat, on hospital accommodation, and on small-pox, and on questions of school administration during the prevalence of infectious disease, see the office memoranda and reports on these subjects.

R. THORNE THORNE, *Medical Officer.*

Local Government Board, Medical Department,
August 26th, 1892.

* A solution fitted for the desired purposes may be made with $\frac{1}{2}$ oz. corrosive sublimate, 1 fluid oz. hydrochloric acid, and five grains of commercial aniline blue, in three gallons (a bucketful) of common water. It ought not to cost more than 3d. the bucketful, and should not be further diluted. The use of non-metallic vessels (wooden or earthenware house tubs or buckets) should be enjoined on those who receive it, and articles that have been soaked in it should be set to soak in common water for some hours before they go to the wash.

† The removal of dangerous filth is here the object to be attained. It cannot confidently be stated that either the iron salt or any available substance will effect a true disinfection of such masses of filth as are here in question.

SMALL-POX—MEMORANDUM AS TO PRECAUTIONS.

(31st January, 1893.)

I.—BY BOARDS OF GUARDIANS.

* * * * *

II.—BY SANITARY AUTHORITIES.

The sanitary authority of any district into which a case of small-pox may be brought, or in which it may occur, should immediately, on obtaining information of the occurrence, give notice to the board of guardians (the local authority for vaccination purposes), or the vaccination officer, in order that all requisite measures in regard to vaccination may be taken. The sanitary authority should also instruct their officers to assist in the administration of the Vaccination Acts by spreading a knowledge of the advantages of vaccination and re-vaccination, and by giving to the vaccination officer any information they may obtain as to children and others unprotected by vaccination.

The sanitary authority themselves should, on any appearance of small-pox within their district, at once proceed (under the powers of the Public Health Act, 1875) to see that proper means to prevent the spread of the disease by ISOLATION OF THE SICK, AND BY DISINFECTION OF INFECTED HOUSES AND THINGS, are adopted. Any extension of the disease from the house first infected, or any fresh importation of it, needs to be dealt with in the same way. And as, from the extreme infectiousness of small-pox, every new case is a fresh source of danger, it is of the first importance towards preventing the spread of the disease that the necessary measures of the kind above mentioned should be taken in each case at the earliest possible moment, hence it is important for every sanitary authority to see that their medical officer of health is kept informed, as completely and promptly as possible, of all cases of small-pox occurring in the district. In districts in which notification of infectious diseases is compulsory there should be little difficulty about this; and the knowledge thus obtained should be supplemented by information procured by house to house inquiry in each locality invaded as to cases of modified small-pox that may have escaped recognition or treatment. In districts in which notification of infectious diseases is not compulsory, the sanitary authority should see that their medical officer of health is supplied with information from the district medical officer of every fresh case of small-pox occurring among paupers, and with immediate notice from the district registrars of all deaths from small-pox; and should request the medical practitioners of the district to give information of any fresh cases of the disease occurring in their private practice.

*In any district invaded by small-pox the sanitary authority will find especial advantage in possessing powers under the Infectious Disease (Notification) Act, 1889, and under the Infectious Disease (Prevention) Act, 1890.**

The following are the measures which sanitary authorities should take for the attainment of these objects:—

1. It is of great importance that all persons suffering from small-pox, and so lodged that the isolation of them from healthy persons cannot be secured without their removal, should be removed to some special hospital or place for the reception of the sick. The 124th section of the Public Health Act, 1875,(a) in the cases before mentioned, gives power to a justice to order such removal; and resort should be had to this provision wherever such a measure seems necessary to prevent the spread of the disease. Similar powers for the necessary detention in hospital of persons suffering from infectious disease, are obtainable under the 12th section

* These Acts may be adopted at the option of sanitary authorities. But it is to be remembered as regards each that at least 14 clear days' notice of the proposed resolution to adopt the Act must be given to every member of the local authority: Also that the resolution adopting the Act must be locally advertised at least a month before it can come into force. It is important therefore that adoption of these Acts should not be deferred until infectious disease is actually epidemic in the district.

(a) *Ante*, p. 143.

Appendix. of the Infectious Disease (Prevention) Act, 1890.(a) The 91st section of the Public Health Act, 1875,(b) including within the term "nuisance" such overcrowding of a house or any part of a house as is dangerous or injurious to the health of the inmates, should also receive the special attention of the sanitary authority wherever any infectious disease is or threatens to become prevalent in the district; and the powers given in the 142nd section of the Act of 1875,(c) as well as those obtainable under sections 8, 9, and 10 of the Act of 1890, should, if necessary, be exercised with regard to the bodies of persons who die of small-pox.

2. If it be doubtful whether suitable accommodation will be found in existing hospitals for the cases of small-pox in the district which ought to be removed from their homes, the sanitary authority, who (under section 131 of the Public Health Act) have power to provide any requisite accommodation for such cases, should bear in mind that small-pox hospitals, as we know them, are apt to disseminate small-pox, and that their sites, therefore, should be placed outside of towns, and should indeed be sought at places as far distant from any populated neighbourhood as considerations of accessibility permit.

3. It is equally necessary that all houses or rooms and things infected with small-pox should be disinfected under skilled direction, and with as little delay as possible after the removal, convalescence, or death of the patient, and for this provision is made in section 120 of the Public Health Act, 1875,(d) and more fully in sections 5, 6, and 7 of the Infectious Disease (Prevention) Act, 1890.(e) To secure the disinfection of houses or rooms being properly performed it will be desirable that it should, in as many cases as possible, be done by the servants of the sanitary authority, and to the satisfaction of the medical officer of health. Under the 15th section of the Infectious Disease (Prevention) Act, 1890,(f) temporary shelter or house accommodation may be provided for the members of any family in which infectious disease has appeared, and who are compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected by the local authority. In order that infected articles and things may be readily but sufficiently disinfected, it will be necessary that a place with the requisite apparatus and attendance for disinfection (preferably by steam) should be ready for use (Public Health Act, section 122).(g) If these public means of disinfecting infected articles and things have not already been provided, this should at once be done. Often it will be better, instead of disinfecting infected articles (such as bedding and clothing), to destroy them; and the sanitary authority have power, under section 121 of the Public Health Act, to do this, and to make compensation for the articles destroyed.

4. As infectious diseases may be spread by the use of public carriages for the conveyance of the sick and of convalescents, the sanitary authority should (under section 123 of the Public Health Act)(g) provide suitable means of conveyance to and from hospital of persons suffering or recovering from small-pox.

5. The sanitary authority should also bear in mind their powers as to dealing with infectious diseases in any tent, van, shed, or similar structure, under section 9 of the Housing of the Working Classes Act, 1885.(h)

6. Public notice should be given of the penalties to which persons are liable on account of the exposure of small-pox patients, the use without proper precautions of public carriages for the conveyance of persons suffering from small-pox or of the bodies of those who have died therefrom, the letting of infected houses or rooms, the sale or sending about of infected things, or the throwing into ashpits of infectious rubbish; and proceedings should be taken by the sanitary authority in every case in which these provisions are disobeyed. (See Public Health Act, sections 126—129, and sections 7, 11, and 13, Infectious Disease (Prevention) Act, 1890.)

M. THORNE THORNE, *Medical Officer.*

*Local Government Board,
January 31st, 1893.*

(a) *Ante*, p. 556.
(b) *Ante*, p. 108.
(c) *Ante*, p. 154.
(d) *Ante*, p. 141.

(e) *Ante*, p. 551.
(f) *Ante*, p. 557.
(g) *Ante*, p. 143.
(h) *Ante*, p. 484.

ISOLATION HOSPITALS—MEMORANDUM.

(January, 1895.)

ENGLISH communities nowadays recognise the advantage of isolation hospitals as a means of preventing the spread of infectious diseases from persons who cannot be properly isolated in their own homes. But too often the provision of such hospitals is put off until some infectious disease is immediately threatening or has actually invaded a district. It cannot be too clearly understood that an isolation hospital, to fulfil its proper purpose of sanitary defence, ought to be in readiness beforehand. During the progress of an epidemic, it is of little avail to set about hospital construction. The mischief of allowing infection to spread from first cases will already have been done, and this mischief cannot be repaired. Thus, hospitals provided during an epidemic are mainly of advantage to particular patients; they have little effect in staying the further spread of infection. Moreover, hospitals provided under such circumstances, to be of any use, must be large and costly; and their construction can seldom be of a kind that is suited in after times for the isolation requirements of their districts.

The present memorandum is designed to represent to urban and rural district councils who are without means of isolation for first cases of infectious sickness appearing in their districts, as also to those who are responsible for the health of special communities in public institutions or elsewhere, the importance of providing isolation hospital accommodation, and of doing so before the invasion of actual infection. It is further intended to suggest to authorities of rural districts and of small towns the means by which they may most advantageously make such provision. Some general principles to be held in view by all authorities who are about to establish isolation hospitals for their districts will be illustrated in the course of the memorandum.(i)

As regards villages.—Large villages and groups of adjacent villages will commonly require the same sort of provision as towns. Where good roads and proper arrangements for the conveyance of the sick have been provided, the best arrangement for village populations is by a small building accessible from several villages; otherwise the requisite accommodation for (say) four cases of infectious disease in a village may at times be got in a fairly isolated and otherwise suitable four-room or six-room cottage which has been acquired by the authority; or by arrangement made beforehand with some trustworthy cottage-holders, not having children, that they should receive and nurse, on occasion, patients requiring such accommodation.

In towns, hospital accommodation for infectious diseases is wanted more constantly, as well as in larger amount than in villages; and in towns there is greater probability that room will be wanted at the same time for two or more infectious diseases which have to be treated separately. The permanent provision to be made in a town should consist of not less than four rooms in two separate pairs; each pair to receive the sufferers from one infectious disease, men and women of course separately. The number of cases for which permanent provision should be made must depend upon various considerations, among which the size and the growth of the town, the housing and habits of its population, and the traffic of the town with other places, are the most important. There is no fixed standard, therefore, by which the standing hospital requirements proper for a town can be measured. Furthermore, it is to be remembered that occasions will arise (as where infection is brought into several parts of a town at one time) when isolation provision, in excess of that commonly sufficient for the town, will become needful.

For a town the hospital provision ought to consist of wards in one or more permanent buildings, with space enough for the erection of other wards, temporary or permanent. Considerations of ultimate economy make it wise to have permanent buildings sufficient for somewhat more than the average necessities of the place, so that recourse to temporary extensions may less often be necessary. In any case it is well to make the administrative offices somewhat in excess of the wants of the permanent wards; because thus, at little additional first cost, they will be ready to serve, when occasion comes, for the wants of temporary extensions.

Plans illustrating the sanitary requirements of small hospitals for infectious

(i) See also the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68), *ante*, p. 1339.

Appendix.

disease are arranged on three sheets accompanying the present memorandum. (a) Plan A, on the first sheet, is that of a little building to hold two patients of each sex. On the second sheet a plan and a section (B) of a rather larger hospital building are shown, providing for eight patients, with separation of sex, and also of one infectious disease from another. A convenient disposition of buildings upon site is also indicated on the same sheet. The third sheet shows a plan and section (C) of a small pavilion adapted to receive six male and six female patients suffering under one kind of infectious disease. It will be found that in all the plans proper standards of space are observed, viz., not less than 2,000 cubic feet of air space, than 144 square feet of floor space, and 12 linear feet of wall space to each bed; and that means are provided for the adequate ventilation and warming of wards, and for securing them from closet emanations and the like. In plan A, earth-closets, in other plans water-closets, are indicated as the means of excrement disposal. The latter are to be regarded as preferable where efficient sewers are available. Places for washing and disinfection, and for a mortuary, are indicated. It will be observed that an interval of 40 feet is everywhere interposed between every building used for the reception of infected persons or things and the boundary of the hospital site. This boundary should have a close fence of not less than 6 feet 6 inches in height, and the 40 feet of interval should not afterwards be encroached on by any temporary building or other extension of the hospital. In the construction and arrangement of such temporary buildings as may at times be wanted in extension of the permanent hospital the same principles should be held in view.

In determining the locality where an infectious hospital should be placed, the wholesomeness of the site, the character of the approaches, together with the facilities for water supply and for slop and refuse removal, are matters of primary importance.

Hospitals for Small-pox.—Ever since the issue in 1882 of the report of the Royal Commission on small-pox and fever hospitals great difficulty has arisen in the selection of sites for the reception of patients suffering from small-pox. (b) Small-pox hospitals have again and again served to disseminate that disease to neighbouring communities, and this, to use the words of the Royal Commission, "in spite of precautions almost in excess of any that could have been anticipated." There is, as yet, no evidence available to indicate at what distance from populations, whether aggregated in institutions or living in dwelling-houses, small-pox hospitals may be established without risk to persons who are susceptible of small-pox infection; but that distance is often a very considerable one. It may, however, be laid down, with a view of lessening the risk of infection, that a local authority should not contemplate the erection of a small-pox hospital—

- 1st. On any site where it would have within a quarter of a mile of it as a centre either a hospital, whether for infectious diseases or not, or a workhouse, or any similar establishment, or a population of 150—200 persons.
- 2ndly. On any site where it would have within half-a-mile of it as a centre a population of 500—600 persons whether in one or more institutions or in dwelling-houses.

It must also be understood that even where the above conditions are strictly fulfilled, there may be circumstances under which the erection of a small-pox hospital should not be contemplated. Cases in which there is any considerable collection of inhabitants just beyond the half-mile zone should always call for especial consideration.

It has been suggested that small-pox hospitals may be so constructed as not to be dangerous to neighbouring habitations; and that this can be done by a system of passing through a furnace all outgoing air from infected wards and places. But, thus far, the efforts made in this direction cannot be regarded as having successfully attained the end in view.

Useful information on points of construction and administration of isolation hospitals, derived from experience of them in various parts of England and Wales, will be found in a report [C.—3290] of the medical department, 1882—re-issued in 1894.

R. THORNE THORNE, *Medical Officer*.

Local Government Board, Medical Department,
January, 1895.

(a) These plans are here omitted, but can be obtained through the publishers of this work.

(b) See notes, *ante*, p. 149.

ELECTIONS.

ELECTION OF URBAN DISTRICT COUNCILLORS IN 1896—CIRCULAR.

(24th February 1896.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
24th February, 1896.

SIR,—I am directed by the Local Government Board to state that, in pursuance of the powers conferred upon them by the Local Government Act, 1894, they have issued an Order prescribing Rules for the ordinary election of urban district councillors in the present year in each urban district other than a borough entitled to elect such councillors in that year.

It will be observed that under Rule 1 of the Order you will be the returning officer for the purposes of any such election, unless you are unable or unwilling to act. If this should be the case, the urban district council should at once appoint some other person to act.

The Board may draw attention to Rule 12 of the Order, under which polls for the election of urban district councillors and of guardians are, under certain circumstances, to be taken together. They may also draw attention to the corresponding provision in Rule 12 of the Order which they have issued prescribing Rules for the ordinary election of guardians in the present year in each parish entitled to elect guardians in that year. Under Rule 13 of the latter Order, the returning officer at the election of urban district councillors will, where the poll for the two elections are to be taken together, be the deputy returning officer for the purposes therein mentioned in relation to the poll for the election of guardians for the parish.

Two copies of each Order are enclosed, and the Board request that, if you do not intend to act as returning officer, you will send them, together with this letter, to the person appointed in your place. The Orders will be placed on sale, so that further copies may, if required, be purchased from Messrs. Eyre & Spottiswoode, East Harding Street, Fleet Street, E.C., either directly or through any bookseller.

I am, Sir, your obedient Servant,

HUGH OWEN, *Secretary*.

The Clerk to the Urban District Council.

URBAN DISTRICT COUNCILLORS—ELECTION ORDER, 1896.

(21st February, 1896.)

To THE COUNTY COUNCIL of every Administrative County in England and Wales, except the Administrative County of London;—

To the Urban District Council of every Urban District in England and Wales, which is not a borough;—

To the Clerk to every such Urban District Council;—

And to all others whom it may concern.

WHEREAS by section 23 of the Local Government Act, 1894,(c) it is, amongst other things, enacted as follows:—

“23. As from the appointed day, where an urban district is not a borough—

* * * * *

“(2.) A person shall not be qualified to be elected or to be a councillor unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district, and no person shall be disqualified by sex or marriage

Appendix.

for being elected or being a councillor. So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a member of an urban sanitary authority shall be repealed:

- “(3.) The parochial electors of the parishes in the district shall be the electors of the councillors of the district, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward:
- “(4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected:
- “(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board.”

And whereas by section 48 of the said Act,^(a) it is, amongst other things, enacted as follows:—

“48.—(2.) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, and shall provide, amongst other things,—

- “(i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more;
- “(ii.) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district;

“(iv.) for fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening;

“(v.) for the polls at elections held at the same date and in the same area being taken together, except where this is impracticable;

“(vi.) for the appointment of returning officers for the elections.

“(3.) At every election regulated by rules framed under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that—

“(a) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

“(b) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the first schedule to that Act.”

“(4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act, shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of . . . district councillors of a county district not a borough.

“Provided that—

“(b) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement

(a) *Ante*, p. 744.

from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.” **Appendix.**

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this our Order, direct that the ordinary election of urban district councillors in the present year in each urban district in England and Wales, other than a borough, entitled to elect such councillors in that year (hereinafter referred to as the urban district) shall, subject to any directions which may be given by Us, be conducted according to the following Rules, and such Rules shall be observed:—

Returning Officer.

- 1.—(1.) The returning officer shall be the clerk to the urban district council.
- (2.) If the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the urban district council shall appoint some other person to act as returning officer or to perform such of the duties of the returning officer as then remain to be performed, as the case may be.
- (3.) In any case which does not come within either paragraph (1) or paragraph (2) of this Rule, the returning officer shall be a person appointed by the county council.
- (4.) The returning officer shall appoint an officer for the purpose of the election.
- (5.) The returning officer may, in writing, appoint a fit person to be his deputy for all or any of the purposes relating to the election of urban district councillors. A deputy returning officer shall have all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is appointed as deputy.

Day of Election.

- 2.—(1.) The day of the election of urban district councillors in the year one thousand eight hundred and ninety-six shall be Monday the thirtieth day of March, or such other day, not being earlier than Saturday, the twenty-eighth day of March, or later than Wednesday the first day of April, as may, for special reasons, be fixed by the county council.
- (2.) Provided that in any urban district the day of the election of urban district councillors and guardians shall be the same.

Notice of Election.

3. Not later than Wednesday, the eleventh day of March, one thousand eight hundred and ninety-six, the returning officer shall prepare and sign a notice of the election, and shall cause public notice to be given of the same in the district. The notice shall be in the Form No. 1 in the first schedule to this Order, or in a form to the like effect.

Nomination of Candidates.

- 4.—(1.) Each candidate for election as an urban district councillor shall be nominated in writing.
- (2.) The nomination paper shall state the name of the district or ward for which the candidate is nominated, the surname and other name or names in full of the candidate, and his place of abode and description, and whether he is qualified as a parochial elector of some parish within the district, or by having during the whole of the twelve months preceding the election resided in the district. It shall be signed by two parochial electors of the district, or, if the district is divided into wards, of the ward, as proposer and seconder, and no more, and shall state their respective places of abode. It shall be in the form set out in the notice in the Form No. 1 in the first schedule to this Order, or in a form to the like effect.
- (3.) The name of more than one candidate shall not be inserted in any one nomination paper.
- (4.) A parochial elector shall not sign more nomination papers than there are urban district councillors to be elected for the district or ward for which the election is to be held. He shall not sign a nomination paper for the district, or for any ward, unless he is registered as a parochial elector in respect of a qualification

Appendix. therein. Neither shall he sign nomination papers for more than one ward in the urban district.

(5.) If any parochial elector shall sign nomination papers for more than one ward in the urban district, or shall sign a number of nomination papers larger than the number of urban district councillors to be elected for the district or ward, such of the nomination papers signed by him as relate to the first ward for which a nomination paper signed by him is received by the returning officer shall alone be valid, and of the nomination papers signed by him which relate to the district or to such ward, such as are first received by the returning officer up to the number of urban district councillors to be so elected shall alone be valid. Provided that, for the purposes of this paragraph, nomination papers not properly filled up and signed shall be excluded.

Nomination Papers to be provided.

5. The returning officer shall provide nomination papers. Any parochial elector may obtain nomination papers from him free of charge.

Time for sending in Nomination Papers.

6. Every nomination paper shall be sent to the returning officer so that it shall be received at his office not later than four o'clock in the afternoon of Monday, the sixteenth day of March, one thousand eight hundred and ninety-six. A nomination paper received after that time shall not be valid. The returning officer shall note on each nomination paper whether it was received before or after that time.

Dealing with Nomination by Returning Officer.

7.—(1.) The returning officer shall number the nomination papers in the order in which they are received by him; and the first valid nomination paper received for a candidate shall be deemed to be the nomination of that candidate.

(2.) The returning officer shall, as soon as practicable after the receipt of any nomination paper, examine the same and decide whether it has or has not been properly filled up and signed by two parochial electors of the district or ward, and whether it is or is not invalid under Rule 4 (5) or Rule 6. His decision that a nomination paper has been so filled up and signed, and is not invalid as aforesaid, shall be final, and shall not be questioned in any proceeding whatever.

(3.) If the returning officer shall decide that a nomination paper is invalid, he shall put a note on it to this effect, stating the grounds of his decision, and he shall sign such note.

(4.) After deciding that the nomination of any candidate is valid, or (except where a nomination of the candidate has been decided to be valid) that a nomination paper for any candidate is invalid, the returning officer shall, not later than Tuesday, the seventeenth day of March, send, by post or otherwise, notice of his decision to the candidate.

Statement as to Persons Nominated.

8. Not later than Wednesday, the eighteenth day of March, one thousand eight hundred and ninety-six, the returning officer shall make out a statement in the Form No. 2 in the first schedule to this Order, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated as urban district councillors for the district or for the several wards thereof, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not. He shall forthwith cause a copy thereof to be suspended in the board room, if any, of the urban district council, and another to be affixed on the principal external gate or door of the offices of the district council. If there are no such offices he shall cause such notice to be posted in some conspicuous place or places within the district.

Withdrawal of Candidate.

9. Any candidate may withdraw his candidature by delivering or causing to be delivered at the office of the returning officer not later than four o'clock in the afternoon of Friday, the twentieth day of March, a notice in writing of such withdrawal, signed by him.

Relation of Nomination to Election.

Appendix.

10. Section 56 of the Municipal Corporations Act, 1882, shall be adapted and altered in its application to the election of urban district councillors in the district, so as to provide as follows, and not otherwise:—

- (1.) If the number of valid nominations exceeds that of the persons to be elected as urban district councillors, the councillors shall be elected from amongst the persons nominated.
- (2.) If the number of valid nominations does not exceed the number of urban district councillors to be elected, or if, by the withdrawal of any candidate as provided by Rule 9, the number of candidates for the district is reduced to a number not exceeding the number to be elected, or if the number of candidates is otherwise so reduced, the returning officer shall, as early as practicable, give public notice in the district to this effect, stating that no poll will be taken, and that the candidates or the remaining candidates, as the case may be, will be declared to be elected.
- (3.) He shall forthwith send, by post or otherwise, a copy of such notice to each of such candidates.
- (4.) The notice shall be in the Form No. 3 in the first schedule to this Order, or in a form to the like effect.

Day and Hours of Poll.

11.—(1.) The poll, if any, shall be held on the day of election as fixed by or under Rule 2 of this Order, and the hours during which the poll shall be open shall be such as shall be fixed by the county council by any general or special order, or if no such Order is in force in the district then such hours as were fixed by the county council for the first election of urban district councillors for the district, so, however, that the poll shall always be open between the hours of six and eight in the evening.

(2.) Provided that in any urban district the hours during which any poll shall be open for the election of urban district councillors and guardians shall be the same.

When Polls to be taken together.

12.—(1.) If the urban district or any ward or wards of the district is or are co-extensive with a parish or united parishes for which an election of guardians is to be held, or with any ward or wards of such a parish, or if the district is not divided into wards such district, or if it is divided into wards any one ward of the district, includes the whole of such parish, united parishes, or ward of a parish, the poll for the election of urban district councillors for the district, and any poll for the election of guardians for the parish, united parishes, or ward shall be taken together.

(2.) If the county council shall be of opinion, in any other case, that the polls for the election of urban district councillors and for the election of guardians can conveniently be taken together, they may give directions accordingly to the returning officers for the two elections, and the polls for such elections shall thereupon be taken together.

(3.) The returning officer for the election of urban district councillors shall act as the deputy returning officer at any poll for the election of guardians, if the polls for the two elections are to be taken together.

Polling Districts.

13.—(1.) (a.) Any parish, or, where a parish is united with another parish for the election of guardians, the united parishes, shall, if wholly comprised in the urban district, be a polling district, or be subdivided into polling districts for the election of urban district councillors, if a poll for the said elections and a poll for the election of guardians are to be taken together.

(b.) If any parish is divided into wards for the election of guardians, paragraph (a.) of this rule shall apply with the substitution of "ward" for "parish."

(c.) Provided that if any parish, united parishes, or ward of a parish for the election of guardians is or are divided into polling districts for the election of county councillors, the whole of each polling district being comprised in the parish, united parishes, or ward, and the lists of parochial electors are made out in separate parts for such polling districts, each district shall, if a poll for the election of urban

Appendix. district councillors and a poll for the election of guardians are to be taken together, be a polling district for the election of urban district councillors.

(d.) Subject as aforesaid, the returning officer may, if he thinks fit, divide the district into polling districts for the election of urban district councillors, but each district shall consist of an area for which a separate list of parochial electors will be available.

(e.) The polling districts for the election of urban district councillors and of any guardians, when the polls for the two elections are to be taken together, shall be the same.

(2.) If the district is divided into polling districts, each parochial elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

Polling Places and Stations.

14. The returning officer shall determine the number and situation of the polling places.

Provided as follows:—

- (a.) That no premises licensed for the sale of intoxicating liquor shall be used for a polling place;
- (b.) That the polling stations for the elections of urban district councillors and of any guardians, when the polls for the two elections are taken together, shall be the same;
- (c.) That, unless the county council otherwise direct, where the number of parochial electors in the urban district, or (if the district is divided into polling districts) in any polling district is not more than five hundred, only one polling station shall be provided for the urban district or polling district; and so on for each additional five hundred parochial electors, or for any less number of parochial electors over and above the last five hundred.

Notice of the Poll.

15.—(1.) If a poll has to be taken, the returning officer shall, five clear days at least before the day fixed for the same, give public notice thereof. The notice shall specify—

- (a.) the day and hours fixed for the poll;
- (b.) the number of urban district councillors to be elected for the district;
- (c.) the names, place of abode, and description of each candidate for the district whom he has decided to have been nominated by a valid nomination paper, and who has not withdrawn his candidature;
- (d.) the names of the proposer and seconder who signed the nomination paper of each candidate;
- (e.) a description of the polling districts, if any; and
- (f.) the situation and allotment of the polling places, and the description of the persons entitled to vote thereat and at the several polling stations.

(2.) The notice shall be in the Form No. 4 in the First Schedule to this Order, or in a form to the like effect.

(3.) If polls are to be taken together in the district as to the election of both urban district councillors and guardians, the returning officer may, if he thinks fit, give one notice only for both polls, and such notice shall be in the Form No. 5 in the First Schedule to this Order, or in a form to the like effect.

Presiding Officers.

16. The returning officer, or some person appointed by him for the purpose, shall preside at each polling station. The person presiding at any polling station shall be called the presiding officer. Provided that at any polling station the same person shall act as presiding officer for the elections of urban district councillors and guardians, the polls for which are to be taken together.

Compartments of Polling Stations.—Ballot Papers.

17. The returning officer shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation,

and shall furnish each presiding officer with such number of ballot papers as may be necessary for effectually taking the poll at the election. **Appendix.**

Polling Agents.

18. If there are only two candidates, each of them may, in writing, appoint a polling agent for each polling station, who may be paid or unpaid. If there are more than two candidates, any number of them, being not less than one-third of the whole number of candidates, may, in writing, appoint one polling agent for each polling station, who may be paid or unpaid. Any such appointment shall be delivered at the office of the returning officer not less than two clear days before the day of the poll. Except as aforesaid, no polling agent, whether paid or unpaid, shall be appointed for the purposes of the election.

Questions to Elector.

19.—(1.) The presiding officer may, and if required by any parochial elector of the district, or any polling agent appointed under Rule 18, shall, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions, or one of them, and no other:—

(a.) Are you the person entered in the parochial register for the parish of [or for the ward] as follows [read the whole entry from the register]?

(b.) Have you already voted at the present election of urban district councillors for the urban district of [in this or any other ward]?

(2.) A person required to answer either of these questions shall not receive a ballot paper or be permitted to vote until he has answered it.

Counting the Votes.

20.—(1.) If the returning officer appoints a person to act as deputy returning officer for the district as regards the custody and opening of the ballot boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate, and of the election of the candidate or candidates to whom the largest number of votes has been given, the person so appointed shall, in addition to his other powers and duties, have all the powers and duties of the returning officer in relation to the matters aforesaid, and to the decision of any question as to any ballot paper and otherwise as to the ballot papers.

(2.) If polls for the election both of urban district councillors and guardians are taken together, the same person shall discharge the duties referred to in paragraph (1) of this Rule in relation to both elections.

(3.) The votes shall be counted in the district or in some place near thereto as soon as practicable after the close of the poll.

Equality of Votes.

21. If an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer or deputy returning officer who counts the votes may, if a parochial elector of the district, give such additional vote in writing, but shall not otherwise be entitled to vote at the election. If in such a case the returning officer is not a parochial elector of the district, or is unwilling to vote, he shall determine by lot which of the candidates whose votes are equal shall be elected.

Who to be deemed to fill Casual Vacancies.

22. In the event of one or more casual vacancies being filled up at the election, where there is a poll, the persons elected by the fewest votes shall be deemed elected to fill such vacancies. Should there be an equality of votes between such persons the urban district council shall determine by ballot which of such persons shall be deemed elected to fill the casual vacancy. If the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the fewest votes, or if the votes are equal the person selected by the urban district council by ballot from the persons so elected shall hold office for the shorter period. Where there is no poll the person or persons to be deemed to be elected to fill the casual vacancy or vacancies shall be determined by the urban district council by ballot.

Appendix.

Declaration of Result of Poll.

23.—(1.) The declaration of the result of the poll shall be in the Form No. 6 in First Schedule to this Order, or in a form to the like effect.

(2.) The returning officer, or deputy returning officer, as the case may be, making the declaration shall forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted. If the declaration is made by a deputy returning officer, he shall forthwith send it to the returning officer.

Publication of Result of Election.

24.—(1.) The returning officer shall prepare and sign a statement of the result of the election in the district, or in all the wards of the district, as the case may be, and shall by such notice declare to be elected the persons who under Rule 10 are to be declared to be elected without a poll being taken. Such persons shall be deemed to have been elected on the day of election fixed by or under Rule 2 of this Order. The notice shall be in the Form No. 7 in the First Schedule to this Order, or in a form to the like effect.

(2.) The returning officer shall cause a copy of the statement to be suspended in the board room, if any, of the urban district council, and he shall also cause public notice thereof to be given.

Application and Adaptation of Ballot Act, 1872.

25. The provisions of the Ballot Act, 1872, which, with adaptations and alterations, are set out in the Second Schedule to this Order, and only such provisions of that Act, shall, subject to such adaptations and alterations, apply to the election of urban district councillors in like manner as in the case of a municipal election.

Provided as follows:—

(1.) Such application shall be subject to the provisions of this Order.

(2.) If polls are taken together for the election of urban district councillors and guardians, one ballot box may, if the returning officer thinks fit, be used for the two elections; but if separate ballot boxes are used for the two elections respectively, no vote for any urban district councillor shall be rendered invalid by the ballot paper being placed in the box intended for the reception of ballot papers for guardians.

(3.) The ballot papers used at the election of urban district councillors shall be of a different colour from that of any ballot papers used in the election of any guardians in the district when the polls for both elections are taken together.

Adaptation of Municipal Corporations Act, 1882.

26.—(1.) The provisions of sections 74 and 75 of the Municipal Corporations Act, 1882, which, with adaptations and alterations, are set out in the Third Schedule to this Order, and such of the provisions of that Act as relate to the acceptance of office, resignation, re-eligibility of holders of office, and filling of casual vacancies, and are, with adaptations and alterations, set out in the Fourth Schedule to this Order, shall, subject to such adaptations and alterations, apply to the election of urban district councillors and to the persons elected thereat.

(2.) In the application of Part IV. of the Municipal Corporations Act, 1882 (relating to corrupt practices and election petitions), (a) as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, (b) the following adaptations and alterations shall have effect:—

(a.) Such application shall be subject to the provisions of this Order.

(b.) References to the election of urban district councillors shall be substituted for references to a municipal election or to an election to a corporate office. “Urban district” shall be substituted for “borough,” “rate applicable to the general expenses of the urban district council” shall be substituted for “borough fund or borough rate,” “returning officer” shall be substituted for “town clerk,” and “voter” shall mean “a parochial elector or a person who votes or claims to vote at an election of urban district councillors.”

(a) *Ante*, p. 1133.

(b) *Ante*, p. 1177.

- (c.) In the application of sub-section (2) of section 89(c) such sub-section shall be adapted and altered so as to read as follows:— Appendix.

“(2.) The security shall be to the amount of fifty pounds unless in any case the High Court or a judge thereof, on summons, order that the same shall be to a lesser amount, or to a larger amount not exceeding three hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.”

Adaptation of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

27. In the application of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884,(d) the following adaptations and alterations shall have effect:—

- (1.) Such application shall be subject to the provisions of this Order.
- (2.) The expressions “urban district or ward of an urban district,” “returning officer of urban district councillors,” and “rate applicable to the general expenses of the urban district council,” shall be deemed to be substituted in the Act for “borough or ward,” “town clerk,” and “borough fund or rate,” respectively.
- (3.) The expression “corporate office” in the Act shall mean “the office of urban district councillor” and “a municipal election” shall mean “an election of one or more urban district councillors”; and the expressions “municipal election court,” “municipal election list,” and “municipal election petition” shall be construed accordingly.
- (4.) So much of section 13 of the Act(e) as permits one polling agent to be employed in each polling station shall not apply, except so far as the employment of polling agents is permitted by Rule 18 of this Order.
- (5.) An election petition complaining of the election on the ground of an illegal practice may be presented at any time within six weeks after the day of election.
- (6.) In section 34 of the Act(f) “burgess roll” shall mean “register of parochial electors.”
- (7.) Section 37 of the Act(g) shall be read as if a reference to an election of urban district councillors was substituted for a reference to any of the elections mentioned in the First Schedule to the Act.

Expenses.

28.—(1.) Any sum which may be payable to the returning officer in respect of his services in the conduct of the election of urban district councillors, or in respect of expenses incurred in relation to the election, shall be defrayed by the urban district council out of the fund or rate applicable to their general expenses under the Public Health Act, 1875.

(2.) If polls for the election of urban district councillors and guardians are taken together, one half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, shall be deemed to have been incurred in relation to the poll for the election of urban district councillors, and shall be defrayed accordingly.

Wards.

29.—(1.) If the district is divided into wards for the election of urban district councillors the Rules in this Order shall apply to each of such wards as if it were the district.

(2.) Provided that if the district is so divided, an elector shall not be permitted to vote in more than one ward.

(3.) Provided also that any sum which in pursuance of this Rule and of Rule 28 would be charged to any ward shall be charged to the district.

(c) *Ante*, p. 1136.

(d) *Ante*, p. 1177.

(e) *Ante*, p. 1180.

(f) *Ante*, p. 1191.

(g) *Ante*, p. 1193.

Appendix.

Publication of Notices.

30. Any public notice required by this Order shall be given by posting the same on or near the principal door of each church and chapel in the district, and in some conspicuous place or places within the district.

Mark instead of Signature.

31. In place of any signature required by this Order, it shall be sufficient for the signatory to affix his mark, if the same is witnessed by two parochial electors.

Misnomer.—Inaccurate Description.

32. No misnomer or inaccurate description of any person or place named in any notice or nomination paper under this Order shall hinder the full operation of such notice or paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood.

And We do hereby further direct that this Order may be cited as the “Urban District Councillors Election Order, 1896.”

FIRST SCHEDULE.

FORM No. 1.

Notice of Election.

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS *[for the several Wards in the above-named District].

* If the urban district is not divided into wards, omit these words.

NOTICE IS HEREBY GIVEN THAT—

1. The day of election of Urban District Councillors for the said District [*or Wards, as the case may be*] will be , the day of , 1896.
2. The number of Urban District Councillors to be elected for the said District [*or Wards, as the case may be*] is †
3. Each candidate for election as an Urban District Councillor must be nominated in writing, and the nomination paper must be sent to me, so that it shall be received at (which is my office for the purpose of the election) not later than four o'clock in the afternoon of Monday, the 16th day of March, 1896.
4. A parochial elector must not sign more nomination papers than there are Urban District Councillors to be elected for the District [*or Ward, as the case may be*], and he must not sign a nomination paper for the District [*or for any Ward thereof*], unless he is registered as a parochial elector in respect of a qualification therein. [Neither must he sign nomination papers for more than one Ward in the District.†]
5. Forms of nomination paper may be obtained, free of charge, from me at the above-named office.
6. The nomination paper must be in the following form, or in a form to the like effect:—

+ If the district is divided into wards, insert the names of the wards, with the number of urban district councillors to be elected for each. A tabular form may be used if preferred.

‡ If the district is not divided into wards, omit these words.

FORM OF NOMINATION PAPER.

Appendix.

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS for the above District [*or* for the Ward of the above District] in the year 1896.

We, the undersigned, being respectively parochial electors of the said District [*or* Ward], do hereby nominate the under-mentioned person as a candidate at the said Election.

Names of Candidate.		Place of Abode.	Description.	How qualified (specify qualification according to direction in Instruction 5).
Surname.	Other Names in full.			
1.	2.	3.	4.	5.

Signature of PROPOSER .
Place of Abode .
Signature of SECONDER .
Place of Abode .

*Instructions for filling up Nomination Paper.**

1. The surname of only one candidate for election must be inserted in Column 1.
2. The other names of the candidate must be inserted in full in Column 2.
3. Insert in Column 3 the place of abode of the candidate.
4. In Column 4 state the occupation, if any, of the candidate. If the candidate has no occupation, insert some such description as "gentleman," or "married woman," or "spinster," or "widow," as the case may be.
5. If the candidate is a parochial elector of some Parish within the District (that is, if his or her name is registered in the register of parochial electors of such Parish) insert in Column 5 "Parochial Elector of Parish of . . ." If the candidate is not a parochial elector of some Parish in the District, but he or she has, during the whole of the twelve months preceding the election, resided in the District, insert in Column 5 "Residence." If the candidate has both these qualifications, it will be sufficient to insert in Column 5 one of his or her qualifications, but both may be inserted.
- 6.—(1.) The paper must be signed by two parochial electors of the District [*or* Ward], and no more; by one as proposer, and by the other as seconder. The places of abode of the Proposer and Seconder must also be inserted. Instead of signing, the Proposer or Seconder may affix his mark if it is witnessed by two parochial electors.
- (2.) A parochial elector must not sign more nomination papers than there are Urban District Councillors to be elected for the District [*or* Ward], and he must not sign a nomination paper for the District [*or* Ward] unless he is registered as a parochial elector in respect of a qualification therein. [Neither must he sign a nomination paper in more than one Ward in the District.]

* These instructions form part of the nomination paper.

7. Not later than Wednesday, the 18th day of March, 1896, I shall cause a copy of a statement containing the names, places of abode, and descriptions of the persons nominated for the office of Urban District Councillor for the said District [*or* Wards], and also containing a notice of my decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not, to be [†suspended in the Board Room of the Urban District Council and another to be] affixed on the principal external gate or door of the offices of the Urban District Council.‡
8. Any candidate nominated for election may not later than four o'clock in the afternoon of Friday, the 20th day of March, 1896, withdraw his candidature by delivering or

+ If there is no such board room omit these words.

‡ If there are no such offices, substitute some conspicuous place or places within the district or wards.

ELECTIONS.

Appendix.

causing to be delivered at my office for the purposes of the election a notice in writing of such withdrawal signed by him.

9. If the number of candidates who are validly nominated for the District [or any Ward], and whose candidature is not withdrawn, exceeds that of the persons to be elected, a poll will be taken on _____, the _____ day of _____, 1896, of which due notice will be given.

Dated this _____ day of March, 1896.

_____, Returning Officer.

_____, Office for purpose of election.

Form No. 2.

Statement as to Persons nominated.

URBAN DISTRICT OF _____

The following is a statement as to the persons nominated for election as Urban District Councillors for the above-named District [or for the several Wards in the above-named District].

District [or Wards].	Persons nominated.			Decision of Returning Officer that Candidate has not been nominated by a valid Nomination Paper.
	Names (Surnames first).	Place of Abode.	Description.	
1.	2.	3.	4.	5.

The Candidates opposite whose names no entry is made in Column 5 have been validly nominated.

Dated this _____ day of March, 1896.

_____, Returning Officer.

_____, Office for purpose of election.

Form No. 3.

Notice that no Poll will be taken.

URBAN DISTRICT OF _____

[Ward of the above District].

WHEREAS the following candidates have been duly nominated for election as Urban District Councillors for the said District [or Ward]:—[Insert names, places of abode, and description of candidates.]

And whereas the number of those _____ [or And whereas the said [insert name or names] has [or have] since withdrawn his [or their] candidature [or if some other event has occurred causing a person to cease to be a candidate state what it is], and the number of the remaining] candidates does not exceed the number of persons to be elected as Urban District Councillors for the said District [or Ward],

I do hereby give notice that a Poll will not be taken, and that the said [insert names] will be declared elected as Urban District Councillors for the said District [or Ward].

Dated this _____ day of March, 1896.

_____, Returning Officer.

FORM No. 4.

Appendix.

Notice of Poll.

[This form is for use where a Poll is taken for the election of Urban District Councillors only.]

URBAN DISTRICT OF .

ELECTION OF URBAN DISTRICT COUNCILLORS for the above District [or for the
of the above District].

Ward

NOTICE IS HEREBY GIVEN—

1. That a Poll for the election of Urban District Councillors for the above-named District [or Ward] will be held on the day of , 1896, between the hours of and .
2. That the number of Urban District Councillors to be elected for the District [or Ward] is .
3. That the names in alphabetical order, places of abode, and descriptions of the Candidates for election, and the names of their respective Proposers and Seconders are as follows:—

Names of Candidates (Surname first).*	Place of Abode.	Descrip'tion.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* Insert particulars as to each candidate for the district or ward whose nomination is valid, and who has not withdrawn his candidature.

- 4.†—(1. That each elector must vote in the Polling District in which the property in respect of which he votes is situate, and if it is situate in more than one Polling District he may vote in any one (but in one only) of such Polling Districts.
(2.) The Polling Districts are as follows:—

† If the district or ward is not divided into polling districts for the purposes of the election, paragraph 4 should be omitted.

- 5.‡ The situation and allotment of the Polling Places, and the description of the persons entitled to vote thereat and at the several Polling Stations, are as follows:—

‡ If only one polling place or station, adapt form accordingly.

6. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election will be [insert colour].

Dated this day of March, 1896.

_____, Returning Officer.

_____, Office for purpose of election.

FORM No. 5.

Notice of Poll.

[This form may be used where polls are taken together for the election of Urban District Councillors and Guardians.]

ELECTION OF URBAN DISTRICT COUNCILLORS AND GUARDIANS for the Urban District of [or for the Ward of the Urban District of], and for the Parish of [or for the Ward of the Parish of], or for the United Parishes of] in the year 1896.

NOTICE IS HEREBY GIVEN—

1. That polls for the election of Urban District Councillors and of Guardians for the above-named District [or Ward] and Parish [or Ward or united Parishes] will be held on , the day of , 1896, between the hours of and .



Appendix.

- 2. That the number of Urban District Councillors to be elected for the District [*or Ward*] is .
- 3. That the number of Guardians to be elected for the Parish [*or Ward*] is .
- 4. That the names in alphabetical order, places of abode, and descriptions of the Candidates for election, and the names of their respective Proposers and Seconders are as follows :—

AS URBAN DISTRICT COUNCILLORS.

Names of Candidate (Surname first).	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

AS GUARDIANS.

Names of [Candidate (Surname first).	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* If the district, parish, or ward is not divided into polling districts for the purposes of the election, paragraph 5 should be omitted.

+ If only one polling place or station, adapt form accordingly.

- *5.—(1.) That each elector must vote in the Polling District in which the property in respect of which he votes is situate and if it is situate in more than one Polling District he may vote in any one (but in one only) of such Polling Districts.
- (2.) The Polling Districts are as follows :—
- †6. The situation and allotment of the Polling Places and the description of the persons entitled to vote thereat and at the several Polling Stations are as follows :—
- 7. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election of Urban District Councillors will be [*insert colour*], and in the election of Guardians will be [*insert colour*].

Dated this day of March, 1896.

_____, Returning Officer
for the election of Urban District Councillors and Deputy
Returning Officer for the election of Guardians.

_____, Office for purpose of election.

FORM No. 6.

Appendix.

Declaration of Result of Poll.

URBAN DISTRICT OF .
ELECTION OF URBAN DISTRICT COUNCILLORS for the above District [*or* for the Ward of the above District].

I, the undersigned, being the Returning Officer [*or* Deputy Returning Officer duly authorised in that behalf] at the poll for the election of Urban District Councillors for the said District [*or* Ward] held on the day of , 1896, do hereby give notice that the number of votes recorded for each candidate at the election is as follows :—

Names of Candidates.		Places of Abode.	Number of Votes recorded.
Surnames.	Other Names.		

And I do hereby declare that the said are duly elected Urban District Councillors for the said District [*or* Ward].

Dated this day of , 1896.

_____, Returning Officer
[*or* Deputy Returning Officer].

FORM No. 7.

Notice of Result of Elections.

URBAN DISTRICT OF .
ELECTION OF URBAN DISTRICT COUNCILLORS for the above District in the year 1896.

I, the undersigned, being the Returning Officer at the election of Urban District Councillors for the said District, do hereby give notice that the candidates at the election whose names are entered in Column 6 of the Statement hereunder opposite to the numbers entered in Column 5 have been declared duly elected Urban District Councillors; and I hereby declare that the candidates whose names are entered in the said Column 6, and opposite to whose names no numbers are entered in Column 5, where no Polls have been taken, were duly elected as Urban District Councillors for the District [*or* for the Wards opposite to the names of which in Column 1 the names of such candidates are entered].

District and Wards.	Names of Candidates.		Places of Abode.	Number of Votes recorded.	Names of Candidates elected.
	Surnames.	Other Names.			
1.	2.	3.	4.	5.	6.

Dated this day of , 1896.

_____, Returning Officer.

Appendix.

SECOND SCHEDULE.

PROVISIONS OF THE BALLOT ACT, 1872, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF URBAN DISTRICT COUNCILLORS IN ANY DISTRICT OTHER THAN A BOROUGH.

PROCEDURE AT ELECTIONS OF URBAN DISTRICT COUNCILLORS.

Poll at Elections.

2. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

If in the register of parochial electors for a parish, the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the register is entered on the counterfoil of a ballot paper, the mark on that part shall also be entered thereon.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes has been given. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

OFFENCES.

Offences in respect of Ballot Papers and Ballot Boxes.

3. Every person who—

- (1.) Forges and counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or
- (2.) Without due authority supplies any ballot paper to any person; or
- (3.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
- (4.) Fraudulently takes out of the polling station any ballot paper; or
- (5.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Infringement of Secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of parochial electors of any elector

who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, agent, and person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

USE OF SCHOOL AND PUBLIC ROOM FOR POLL.

6. The returning officer at an election of urban district councillors may use free of charge, for the purpose of taking the poll or for counting the votes at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll or for counting the votes as aforesaid.

The use of any room in an unoccupied house for taking the poll shall not render any person liable to be rated or to pay any rate for such house.

DUTIES OF RETURNING AND ELECTION OFFICERS.

General Powers and Duties of Returning Officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of parochial electors, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting the election.

Every deputy returning officer shall, in so far as he acts as returning officer be deemed to be included in the term returning officer.

Keeping of Order in Station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Powers of Presiding Officer and Administration of Oaths, &c.

10. For the purpose of the adjournment of the poll, a presiding officer shall have the power by law belonging to a deputy returning officer in a parliamentary election; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Liability of Officers for Misconduct.

11. Every returning officer, presiding clerk, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition

Appendix. to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

No returning officer or officer appointed by him in connexion with the election of urban district councillors for any urban district, nor any partner or clerk of any such officer, shall act as agent for any candidate in the management or conduct of his election as an urban district councillor. If any returning officer or officer appointed by him, or the partner or clerk of any such officer, shall so act he shall be guilty of a misdemeanor.

MISCELLANEOUS.

Prohibition of Disclosure of Vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Non-compliance with Rules.

13. No election shall be declared invalid by reason of a defect in the title or appointment of the returning officer or deputy returning officer or of a non-compliance with the rules contained in the First Schedule to this Act or in the Urban District Councillors Election Order, 1896, or any mistake in the use of the forms in the Second Schedule to this Act or in the said Order, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act and of the Local Government Act, 1894, and that such non-compliance or mistake did not affect the result of the election.

PERSONATION.

Definition and Punishment of Personation.

24. The following enactments shall be made with respect to personation at an election of urban district councillors:

It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

Sections 86 to 89, both inclusive, of the Parliamentary Voters Registration Act, 1843, shall apply to personation at an election of urban district councillors in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Act, but with the substitution of the words "any parochial elector or any agent appointed under the Urban District Councillors Election Order, 1896," for "any such agent so appointed as aforesaid" or for any reference to any such agent, and of "the presiding officer" for "the returning officer or his respective deputy."

EFFECT OF SCHEDULES.

28. The schedules to this Act, and the notes thereto, and directions therein shall be construed and have effect as part of this Act.

SCHEDULES TO ACT.

FIRST SCHEDULE TO ACT.

RULES FOR ELECTIONS OF URBAN DISTRICT COUNCILLORS.

The Poll.

15. At every polling place the returning officer shall, subject to the provisions of the Urban District Councillors Election Order, 1896, provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth. Appendix.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret.

21. The presiding officer appointed to preside at each station shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names; it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector, together with the distinguishing mark, if any, of the part of the register in which the number occurs, shall, as required by section 2 of this Act, as adapted, be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions permitted by the Urban District Councillors Election Order, 1896, to be asked of voters at the time of polling, and upon taking an oath in the form hereinafter set out, which the presiding officer shall administer, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called "the tendered votes list."

Appendix.

The oath shall be administered in the following form :—

“You do swear that you are the same person whose name appears as *A.B.* on the Register of Parochial Electors for the Parish of _____ in this District [*or on such part of the Register of Parochial Electors for the Parish of _____ as relates to this Ward*], and that you have not already voted at the present election for this District [*add, in case of an election for a Ward, in this or any other Ward*].

“So HELP YOU GOD.”

Provided that any person entitled to affirm in lieu of taking an oath may affirm in the following form :—

“I, *A.B.*, do solemnly, sincerely, and truly declare and affirm that I am the same person whose name appears as *A.B.* on the Register of Parochial Electors for the Parish of _____ in this District [*or on such part of the Register of Parochial Electors for the Parish of _____ as relates to this Ward*], and that I have not already voted at the present election for this District [*add, in case of an election for a Ward, in this or any other Ward*].”

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,—

- (1.) Each ballot box in use at his station, unopened but with the key attached; and
- (2.) The unused and spoilt ballot papers, placed together; and
- (3.) The tendered ballot papers; and
- (4.) The marked copies of the register of parochial electors, and the counterfoils of the ballot papers; and
- (5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads “physical incapacity,” “Jews,” and “unable to read,” and the declarations of inability to read;

and shall deliver such packets to the returning officer, or deputy returning officer, by whom the votes are to be counted, unless he is himself such officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. Each candidate may appoint an agent to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, the agents of the candidates, and any person to whom Rule 51 of this Schedule applies, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. If a poll has been taken as to the election of urban district councillors only, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. If polls have been taken at the same date for the election both of urban district councillors and of guardians, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open one of the ballot boxes and taking out the papers therein shall separate those relating to the election of urban district councillors from any relating to the election of guardians, and shall count and record the number of ballot papers relating to each election. He shall then secure the ballot papers relating to each election by placing them in separate packets under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall proceed in like manner with any other ballot boxes and the papers therein. When all the ballot boxes and the papers therein have been so dealt with, he shall open all the packets of ballot papers relating to one election, and shall mix all such papers together, and shall proceed to count the votes, keeping the papers relating to any other

election sealed up until he has completed such counting. He shall afterwards deal in manner aforesaid with the packets and papers relating to the other election or elections. Appendix.

The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall draw up a statement showing the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates to copy such statement. If the votes are counted by a deputy returning officer he shall, with the declaration of the result of the poll, report to the returning officer the number of ballot papers rejected and not counted by him, under the above heads, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall draw up a statement as to the result of such verification, and shall, on request, allow any agents of the candidates to copy it.

If the votes are counted by a deputy returning officer, he shall report to the returning officer the result of the verification, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it. He shall with his report send to the returning officer the sealed packets of counted and rejected ballot papers, and the unopened sealed packets which he has received from any presiding officer.

38. Lastly, the returning officer shall carefully preserve for the period hereinafter mentioned all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the district for which such election was held.

39. The returning officer shall retain for six months all documents relating to an election of urban district councillors, and then, unless otherwise directed by an order of the county court having jurisdiction in the parish or in any part thereof, or of any tribunal in which the election is questioned, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the returning officer, except under the order of the county court or tribunal aforesaid, to be granted by such court or tribunal on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return ; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the court or tribunal making the same may think expedient, and shall be obeyed by the returning officer.

41. No person shall, except by order of the county court having jurisdiction in the district or any part thereof, or of any tribunal having cognizance of any question relating to the election, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the returning officer. Such order may be made subject to such conditions as to persons, time, place,

Appendix. and mode of opening or inspection as the court or tribunal making the order may think expedient: Provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents in the custody of a returning officer in pursuance of this Act, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may have been or may hereafter be prescribed by the council of the county in which the district is situate, and the returning officer shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may have been or may hereafter be prescribed by the county council.

43. Where an order is made for the production by the returning officer of any document in his possession relating to any specified election of urban district councillors, the production by such officer or his agent of the document ordered, in such manner as may be directed by such order, or by an order of the court having power to make such first-mentioned order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such returning officer or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

43 (a.) There shall be an appeal from any order of the county court under these rules in like manner as in other cases in such court.

General Provisions.

47. If the returning officer presides at any polling station, the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station, except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his, if appointed under Rule 31 of this Schedule, might have undertaken, and may, if he does not appoint such an agent, be present at the counting of the votes, or may himself take the place of such agent: Provided that any persons acting under this Rule may, at any time before so acting, make the statutory declaration as to secrecy required by Rule 54 of this Schedule, but he shall not so act until he has made such declaration.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent for the purposes of attending a polling station, or at the counting of the votes dies, or becomes incapable of acting during the time of the election, another agent may be appointed in his place, and notice shall forthwith be given to the returning officer in writing of the name and address of any agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, and also every officer, clerk, or agent authorised to attend at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such

expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

Appendix.

SECOND SCHEDULE TO ACT.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Form of Ballot Paper.

Form of Front of Ballot Paper.

ELECTION OF URBAN DISTRICT COUNCILLORS.

Counterfoil
No.

1	CADE (John Cade, of 22, Welclose Place, Accountant.)	
2	GIBSON (Henry Gibson, of 10, High Street, Oilman.)	
3	JOHNSON (Charles Johnson, of 7, Albion Street, gentleman.)	
4	ROBINSON (Jane Ellen Robinson, of 12, Green Street, Grocer.)	
5	THOMPSON (William Henry Thompson, of 14, Queen Street, Silversmith.)	
6	WILSON (Robert Wilson, of 22, Hanover Square, Chemist.)	

NOTE:—

The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

Form of Back of Ballot Paper.

No.

Election of Urban District Councillors for
of Urban District].
1896.

Urban District [*or*

Ward

Note.—The number on the ballot paper is to correspond with that on the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, and the names, places of abode, and descriptions, and the number on the back of the paper, shall be printed in small characters.

Appendix.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

The voter may vote for _____ candidates as urban district councillors.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than _____ candidates, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.---These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare, That I will not at this election of urban district councillors for the Urban District of _____ [or _____ Ward of the Urban District of _____], do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.---The section must be read to the declarant by the person taking the declaration. One declaration may be made by the Returning Officer for all the Wards for which he is Returning Officer.

Form of Declaration of inability to read.

I, *A. B.*, of _____, being numbered _____ on the Register of Parochial Electors for the Parish of _____, do hereby declare that I am unable to read.

_____ day of _____, 1896. *A. B.*, his mark.

I, the undersigned, being the presiding officer for the _____ polling station for the Urban District of _____ [or _____ Ward of the Urban District of _____], do hereby certify that the above declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

Signed, *C. D.*,
Presiding Officer for _____ polling station for the
Urban District of _____ [or _____ Ward of
the Urban District of _____].

_____ day of _____, 1896.

THIRD SCHEDULE.

SECTIONS 74 AND 75 OF THE MUNICIPAL CORPORATIONS ACT, 1882, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF URBAN DISTRICT COUNCILLORS IN A DISTRICT OTHER THAN A BOROUGH.

Offences in relation to Nomination Papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the Returning Officer any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Neglect of Duty by Returning Officer or Deputy Returning Officer.

75.—(1.) If a person who has undertaken to act as returning officer, or deputy returning officer, at an election of urban district councillors, neglects or refuses to conduct or declare the election in manner provided by the Local Government Act, 1894, and the Urban District Councillors Election Order, 1896, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2.) An action under this section shall not lie after three months from the neglect or refusal.

FOURTH SCHEDULE.

PROVISIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882, WITH RESPECT TO THE ACCEPTANCE OF OFFICE, RESIGNATION, RE-ELIGIBILITY OF HOLDERS OF OFFICE, AND FILLING OF CASUAL VACANCIES, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF URBAN DISTRICT COUNCILLORS IN ANY DISTRICT OTHER THAN A BOROUGH.

Obligation to accept Office or pay Fine.

34.—(1.) Every qualified person elected to the office of urban district councillor, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within one month after notice of election, or shall, in lieu thereof, be liable to pay to the district council a fine of such amount, not exceeding fifty pounds, as the district council by regulations determine.

(2.) If there are no regulations determining fines, the fine shall be twenty pounds.

(3.) The persons exempt under this section are—

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body.

(4.) A fine payable under this section shall be recoverable summarily.

(5.) If a person is elected district councillor in more than one ward in the urban district for which the election is held, he shall not accept office in respect of more than one of such areas, and if he accepts office or pays the fine for non-acceptance of office in respect of one of such areas, he shall not be liable to a fine for non-acceptance of office in respect of any other of such areas.

(6.) Any person who has been elected without his consent to his nomination being previously obtained shall not be liable to a fine under this section.

Appendix.

Declaration on Acceptance of Office.

35. A person elected to the office of urban district councillor shall not, until he has made and subscribed before two members of the district council, or the clerk to the district council, or, if he is absent from the United Kingdom, before a British Consul, a declaration in the following form, or in a form to the like effect, act in the office except in administering that declaration:—

FORM OF DECLARATION ON ACCEPTANCE OF OFFICE.

I, *A. B.*, having been elected urban district councillor for the urban district of [in respect of the Ward of the District], hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

Dated this day of , 1896.

* If the declaration is made and subscribed before the clerk or a consul, adapt form accordingly.

Power to receive Declaration.

239.—(1.) Members of the district council or the clerk, or a British Consul, shall have authority to receive the declaration required to be made by an urban district councillor without any commission or authority other than this Act.

Penalty on acting in office without making Declaration.

41.—(1.) If any person acts in the office of urban district councillor without having made the declaration by this Act required, he shall for each offence be liable to a fine not exceeding twenty pounds, recoverable by action.

(2.) The declaration, if made before a British Consul, shall be forthwith sent to the clerk to the district council.

Resignation of Office.

36.—(1.) A person elected as urban district councillor may at any time, by writing signed by him and delivered to the clerk to the urban district council, resign the office, on payment of the fine provided for non-acceptance thereof.

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the district council, and countersigned by the clerk, and fixed on the principal external gate or door of the offices of the district council, and the office shall thereupon become vacant.

Re-eligibility of Office-holders.

37. A person ceasing to hold the office of urban district councillor shall, unless disqualified to hold the office, be re-eligible.

Filling of Casual Vacancies.

40.—(1.) On a casual vacancy in the office of urban district councillor, an election shall be held in accordance with rules framed under the Local Government Act, 1894; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of urban district councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the district council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

Time for filling Casual Vacancies.

Appendix.

66.—(1.) On a casual vacancy in the office of urban district councillor, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the district council or to the clerk by two councillors.

(3.) The day of election shall be fixed by the clerk to the district council.

(4.) Nothing in this Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.

Given under the Seal of Office of the Local Government Board, this Twenty-first day of February, in the year One thousand eight hundred and ninety-six.

(L.S.)

HENRY CHAPLIN, *President.*

HUGH OWEN, *Secretary.*

RURAL DISTRICT COUNCILLORS—ELECTION ORDER, 1896.

(19th February, 1896.)

To THE COUNTY COUNCIL of every Administrative County in England and Wales, except the Administrative County of London ;—

To the Rural District Council of every Rural District in England and Wales ;—

To the Clerk to every such Rural District Council as aforesaid ;—

And to all others whom it may concern.

WHEREAS by section 20 of the Local Government Act, 1894,(a) it is, amongst other things, enacted as follows :—

“20. As from the appointed day the following provisions shall apply to
“boards of guardians :—

“(2.) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector of some parish within the union, or has during the whole of the twelve months preceding the election resided in the union, or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a county borough or not, is qualified to be elected a councillor for that borough, and no person shall be disqualified by sex or marriage for being elected or being a guardian. So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed :

“(3.) The parochial electors of a parish shall be the electors of the guardians for the parish, and, if the parish is divided into wards for the election of guardians, the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward :

“(4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected :

“(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board.”

And whereas by section 24 of the said Act(b) it is, amongst other things, enacted as follows :—

“24.—(1.) The district council of every rural district shall consist of a chairman and councillors, and the councillors shall be elected by the parishes or other areas for the election of guardians in the district.

“(2.) The number of councillors for each parish or other area in a rural district shall be the same as the number of guardians for that parish or area.

(a) *Ante*, p. 715.

(b) *Ante*, p. 721.

Appendix.

“(3.) The district councillors for any parish or other area in a rural district shall be the representatives of that parish or area on the board of guardians, and when acting in that capacity shall be deemed to be guardians of the poor, and guardians as such shall not be elected for that parish or area.

“(4.) The provisions of this Act with respect to the qualification, election, and term of office and retirement of guardians, and to the qualification of the chairman of the board of guardians, shall apply to district councillors and to the chairman of the district council of a rural district, and any person qualified to be a guardian for a union comprising the district shall be qualified to be a district councillor for the district.”

And whereas by section 48 of the said Act(a) it is, amongst other things, enacted as follows:—

“48.—(2.) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, and shall provide, amongst other things,—

“(i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more;

“(ii.) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district;

* * * * *

“(iv.) for fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening;

“(v.) for the polls at elections held at the same date and in the same area being taken together, except where this is impracticable;

“(vi.) for the appointment of returning officers for the elections.

“(3.) At every election regulated by rules framed under this Act the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that—

“(a) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

“(b) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act.

“(4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, * * * re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough.

* * * * *

“Provided that—

“(b) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election; and

“(c) the rules may provide for the incidence of the charge for the expenses of the elections of guardians being the same as heretofore.”

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this our Order, direct that the ordinary election of rural district councillors in the present year in each parish in England and Wales entitled to elect such councillors in that year shall, subject to any directions which may be given by Us, be conducted according to the following rules, and such rules shall be observed :—

Appendix.

Returning Officer.

1.—(1.) The returning officer shall be the clerk to the rural district council of the rural district in which the parish is situate or with which it is co-extensive, or if there is more than one such clerk, then the person who acts as such clerk for the purposes of the Public Health Act, 1875.

(2.) If the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the rural district council shall appoint some other person to act as returning officer or to perform such of the duties of the returning officer as then remain to be performed, as the case may be, but the same person shall in all cases be the returning officer at the election of the rural district councillors and of any parish councillors to be elected at the same date in the parish.

(3.) The returning officer shall appoint some place within the union in which the parish is situate as an office for the purpose of the election.

(4.) The returning officer may, in writing, appoint a fit person to be his deputy for all or any of the purposes relating to the election of rural district councillors, and shall appoint such a deputy in the case and for the purposes mentioned in Rule 20 of this Order. A deputy returning officer shall have all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is appointed as deputy.

(5.) The same person shall act as deputy returning officer in respect of the election both of rural district councillors and of any parish councillors to be elected at the same date in the parish.

Day of Election.

2.—(1.) The day of the election of rural district councillors in the parish in the year one thousand eight hundred and ninety-six shall be Monday, the thirtieth day of March, or such other day, not being earlier than Saturday, the twenty-eighth day of March, or later than Wednesday, the first day of April, as may, for special reasons, be fixed by the county council.

(2.) Provided that the day of election of rural district councillors in the parish and the day of the poll for the election of any parish councillors to be elected at the same date in the parish shall be the same.

Notice of Election.

3.—(1.) Not later than Wednesday, the eleventh day of March, one thousand eight hundred and ninety-six, the returning officer shall prepare and sign a notice of the election of rural district councillors in the parishes in which the election is to be held.

(2.) He shall cause printed copies of the notice to be affixed on or near to the principal door of each church and chapel in each such parish, and also to be posted in some conspicuous place or places within the parish.

(3.) The notice shall be in the Form No. 1 in the First Schedule to this Order, or in a form to the like effect.

Nomination of Candidates.

4.—(1.) Each candidate for election as a rural district councillor shall be nominated in writing.

(2.) The nomination paper shall state the name of the parish or other area for which the candidate is nominated, the surname and other name or names in full of the candidate, and his place of abode and description, and whether he is qualified as a parochial elector of some parish within the poor law union in which the rural district or the part of the rural district containing the parish or other area is situate

Appendix. is comprised, or by having during the whole of the twelve months preceding the election resided in the union, or by being qualified to be a councillor for a borough wholly or partly situate within the union. It shall be signed by two parochial electors of the parish or other area, as proposer and seconder, and no more, and shall state their respective places of abode. It shall be in the form set out in the notice in the Form No. 1 in the First Schedule to this Order, or in a form to the like effect.

(3.) The name of more than one candidate shall not be inserted in any one nomination paper.

(4.) A parochial elector shall not sign more nomination papers than there are rural district councillors to be elected for the parish or other area in the rural district for which the election is to be held. He shall not sign a nomination paper for any parish or other area unless he is registered as a parochial elector in respect of a qualification therein. Neither shall he sign nomination papers for more than one parish or other area in the rural district.

(5.) If any parochial elector shall sign nomination papers for more than one parish or other area in the rural district or shall sign a larger number of nomination papers than the number of rural district councillors to be elected for the parish or other area, such of the nomination papers signed by him as relate to the first parish or other area for which a nomination paper signed by him is received by the returning officer shall alone be valid, and of the nomination papers signed by him which relate to that parish or other area such as are first received by the returning officer up to the number of rural district councillors to be so elected shall alone be valid. Provided that for the purposes of this paragraph nomination papers not properly filled up and signed shall be excluded.

Nomination Papers to be provided.

5. The returning officer shall provide nomination papers, and shall furnish the overseers of the parish with a supply thereof. Any parochial elector may obtain nomination papers from either the returning officer or the overseers free of charge.

Time for sending in Nomination Papers.

6. Every nomination paper shall be sent to the returning officer so that it shall be received at his office not later than four o'clock in the afternoon of Monday, the sixteenth day of March, one thousand eight hundred and ninety-six. A nomination paper received after that time shall not be valid. The returning officer shall note on each nomination paper whether it was received before or after that time.

Dealing with Nominations by Returning Officer.

7.—(1.) The returning officer shall number the nomination papers in the order in which they are received by him; and the first valid nomination paper received for a candidate shall be deemed to be the nomination of that candidate.

(2.) The returning officer shall, as soon as practicable after the receipt of any nomination paper, examine and decide whether it has or has not been properly filled up and signed by two parochial electors of the parish or other area, and whether it is or is not invalid under Rule 4 (5) or Rule 6. His decision that a nomination paper has been so filled up and signed, and is not invalid as aforesaid, shall be final, and shall not be questioned in any proceeding whatever.

(3.) If the returning officer shall decide that a nomination paper is invalid, he shall put a note on it to this effect, stating the grounds of his decision, and he shall sign such note.

(4.) After deciding that the nomination of any candidate is valid, or (except where a nomination of any candidate has been decided to be valid) that a nomination paper for the candidate is invalid, the returning officer shall, not later than Tuesday, the seventeenth day of March, send, by post or otherwise, notice of his decision to the candidate.

Statement as to Persons Nominated.

8. Not later than Wednesday, the eighteenth day of March, one thousand eight hundred and ninety-six, the returning officer shall make out a statement in the Form No. 2 in the First Schedule to this Order, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated

as rural district councillors for the several parishes for which the election is to be held, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not. He shall forthwith cause a copy thereof to be suspended in the board room of the guardians of the poor law union in which any of these parishes are situate, and another to be affixed on the principal external gate or door of every workhouse of such union, and, if the board room of the guardians is not situate at any such workhouse, on the external gate or door of the building in which the board room is comprised.

Appendix.

Relation of Nomination to Election.

9. Section 56 of the Municipal Corporations Act, 1882, shall be altered and adapted in its application to the election of rural district councillors in the parish so as to provide as follows, and not otherwise:—

- (1.) If the number of valid nominations exceeds that of the persons to be elected as rural district councillors, the councillors shall be elected from amongst the persons nominated.
- (2.) If the number of valid nominations does not exceed the number of rural district councillors to be elected, the returning officer shall on Friday, the twentieth day of March, One thousand eight hundred and ninety-six, send, by post or otherwise, notice to each candidate who has not withdrawn his candidature under Rule 10, stating that he will be returned as elected. He shall also as early as practicable send, by post or otherwise, notice to the overseers of the parish of the names, places of abode, and descriptions of the persons who will be declared to be elected, and the overseers shall give public notice thereof in the parish.

Withdrawal of Candidate.

10. Any candidate may withdraw his candidature by delivering or causing to be delivered at the office of the returning officer not later than four o'clock in the afternoon of Friday, the twentieth day of March, a notice in writing of such withdrawal, signed by him.

If Number of Candidates is reduced to Number of Persons to be elected.

11.—(1.) If by the withdrawal of any candidates as provided by Rule 10 the number of candidates for the parish is reduced to a number not exceeding the number of persons to be elected, or if the number of candidates is otherwise so reduced, the returning officer shall give public notice in the parish to this effect, stating that no poll will be taken, and that the remaining candidates will be declared to be elected.

(2.) He shall forthwith send, by post or otherwise, a copy of such notice to each of such last-mentioned candidates.

(3.) The notice shall be in the Form No. 3 in the First Schedule to this Order, or in a form to the like effect.

Day and Hours of Poll.

12.—(1.) The poll, if any, shall be held on the day of election as fixed by or under Rule 2 of this Order, and the hours during which the poll shall be open shall be such as shall be fixed by the county council by any general or special order, or if no such Order is in force in the parish, then such hours as were fixed by the county council for the first election of parish councillors or rural district councillors in the parish, so, however, that the poll shall always be open between the hours of six and eight in the evening.

(2.) Provided that the hours during which any poll shall be open for the election of rural district councillors and of any parish councillors for the parish shall be the same.

Polling Districts.

13.—(1.) (a.) If the parish is divided into polling districts for the election of county councillors or of parish councillors, the whole of each such district being comprised in the parish, and the lists of parochial electors are made out in separate parts for such districts, each district shall be a polling district for the election of rural district councillors.

Appendix.

(b.) If the parish is not so divided, but is divided into wards for the election of parish councillors, each ward shall be a polling district for the election of rural district councillors.

(c.) If neither paragraph (a.) nor paragraph (b.) of this rule applies to the parish, the returning officer may, if he thinks fit, divide the parish into polling districts for the election of rural district councillors, but each district shall consist of an area for which a separate list of parochial electors will be available: Provided that the parish shall not be divided into polling districts, if the population thereof, according to the Census of One thousand eight hundred and ninety-one, is not three hundred or upwards.

(d.) The polling districts for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish shall be the same.

(2.) If the parish is divided into polling districts, each parochial elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

Polling Places and Stations.

14. The returning officer shall determine the number and situation of the polling places.

Provided as follows:—

- (a.) That no premises licensed for the sale of intoxicating liquor shall be used for a polling place;
- (b.) That the same polling stations shall be used for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish;
- (c.) That, unless the county council otherwise direct, where the number of parochial electors in the parish, or (if the parish is divided into polling districts) in any polling district, is not more than five hundred, only one polling station shall be provided for the parish or polling district; and so on for each additional five hundred parochial electors, or for any less number of parochial electors over and above the last five hundred.

Notice of the Poll.

15.—(1.) If a poll has to be taken, the returning officer shall, five clear days at least before the day fixed for the same, give public notice thereof. The notice shall specify—

- (a.) the day and hours fixed for the poll;
 - (b.) the number of rural district councillors to be elected for the parish;
 - (c.) the names, place of abode, and description of each candidate for the parish whom he has decided to have been nominated by a valid nomination paper, and who has not withdrawn his candidature;
 - (d.) the names of the proposer and seconder who signed the nomination paper of each candidate;
 - (e.) a description of the polling districts, if any; and
 - (f.) the situation and allotment of the polling places, and the description of the persons entitled to vote thereat and at the several polling stations.
- (2.) The notice shall be in the Form No. 4 in the First Schedule to this Order, or in a form to the like effect.
- (3.) If polls are to be taken in the parish as to the election of both rural district councillors and parish councillors, the returning officer may, if he thinks fit, give one notice only for both polls, and such notice shall be in the Form No. 5 in the First Schedule to this Order, or in a form to the like effect.

Presiding Officers.

16. The returning officer, or some person appointed by him for the purpose, shall preside at each polling station. The person presiding at any polling station shall be called the presiding officer.

Provided as follows:—

- (a.) At any polling station the same person shall act as presiding officer for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish.

- (b.) In making appointments under this rule the returning officer shall, as far as practicable, secure the services of suitable persons resident in the parish, so as to diminish expense. Appendix.

Compartments of Polling Stations.—Ballot Papers.

17. The returning officer shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and shall furnish each presiding officer with such number of ballot papers as may be necessary for effectually taking the poll at the election.

Polling Agents.

18. If there are only two candidates, each of them may, in writing, appoint a polling agent for each polling station, who may be paid or unpaid. If there are more than two candidates, any number of them, being not less than one-third of the whole number of candidates, may, in writing, appoint one polling agent for each polling station, who may be paid or unpaid. Any such appointment shall be delivered at the office of the returning officer not less than two clear days before the day of the poll. Except as aforesaid, no polling agent, whether paid or unpaid, shall be appointed for the purposes of the election.

Prohibition of Voting in more than one Parish.—Questions to Elector.

- 19.—(1.) An elector shall not vote in more than one parish in the district.
 (2.) The presiding officer may, and if required by any parochial elector of the parish, or any polling agent appointed under Rule 18, shall, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions, or one of them, and no other:—
 (a.) Are you the person entered in the parochial register for this parish [or ward] as follows [read the whole entry from the register]?
 (b.) Have you already voted at the present election of rural district councillors in this or any other parish or ward in the rural district of _____?
 (3.) A person required to answer either of these questions shall not receive a ballot paper or be permitted to vote until he has answered it.

Counting the Votes.

20.—(1.) The returning officer, when he does not act as a presiding officer at any polling station for the parish, shall appoint the presiding officer or some one of the presiding officers to act as deputy returning officer for the parish, as regards the custody and opening of the ballot boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate and of the election of the candidate or candidates to whom the largest number of votes has been given. The person so appointed shall, in addition to his other powers and duties, have all the powers and duties of the returning officer in relation to the decision of any question as to any ballot paper and otherwise as to the ballot papers. Provided that, if the parish is divided into wards for the election either of rural district councillors or of parish councillors, but not for both elections, or, if the parish is so divided for both elections, and the wards are not the same for both elections, one deputy returning officer shall act under this Rule for the whole of the parish.

(2.) The same person shall act as deputy returning officer in respect of the election both of rural district councillors and of any parish councillors to be elected at the same date for the parish.

(3.) The votes shall be counted in the parish or in some place near thereto as soon as practicable after the close of the poll.

Equality of Votes.

21. If an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer or deputy returning officer, as the case may be, may, if a parochial elector of the parish, give such additional vote in writing, but shall not otherwise be entitled to vote at the election. If in such a case the returning officer is not a parochial elector of the parish, or is unwilling to vote, he shall determine by lot which of the candidates whose votes are equal shall be elected.

Appendix.*Who to be deemed to fill Casual Vacancies.*

22. In the event of one or more casual vacancies being filled up at the election, where there is a poll, the persons elected by the fewest votes shall be deemed elected to fill such vacancies. Should there be an equality of votes between such persons the rural district council shall determine by ballot which of such persons shall be deemed elected to fill the casual vacancy. If the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the fewest votes, or if the votes were equal the person selected by the rural district council by ballot from the persons so elected shall hold office for the shorter period. Where there is no poll the person or persons to be deemed to be elected to fill the casual vacancy or vacancies shall be determined by the rural district council by ballot.

Declaration of Result of Poll.

23.—(1.) The declaration of the result of the poll shall be in the Form No. 6 in the First Schedule to this Order, or in a form to the like effect.

(2.) The returning officer, or deputy returning officer, as the case may be, making the declaration shall forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted. If the declaration is made by a deputy returning officer, he shall forthwith send it to the returning officer.

Publication of Result of Elections.

24.—(1.) The returning officer shall prepare and sign in duplicate a statement of the result of the elections in all the parishes in the district for which elections are held, and shall by such notice declare to be elected the persons who, under Rule 9 or Rule 11, are to be declared to be elected without a poll being taken. The notice shall be in the Form No. 7 in the First Schedule to this Order, or in a form to the like effect.

(2.) One of these statements shall be sent by the returning officer, as early as practicable, to the clerk to the rural district council, and the other to the clerk to the guardians of the union comprising the rural district or the part of a rural district; and copies of the statement shall be sent by the returning officer to the elected candidates.

(3.) The returning officer shall also send a sufficient number of copies of the statement to the overseers of all the parishes in the rural district for which elections are held, and the overseers of every such parish shall cause public notice to be given of such statement in accordance with Rule 32 of this Order.

Application and Adaptation of Ballot Act, 1872.

25. The provisions of the Ballot Act, 1872, which, with adaptations and alterations, are set out in the Second Schedule to this Order, and only such provisions of that Act, shall, subject to such adaptations and alterations, apply to the election of rural district councillors in like manner as in the case of a municipal election.

Provided as follows:—

(1.) Such application shall be subject to the provisions of this Order.

(2.) If an election of rural district councillors and of any parish councillors is held in the parish at the same date, one ballot box may, if the returning officer thinks fit, be used for the two elections; but, if separate ballot boxes are used for the two elections respectively, no vote for any rural district councillor shall be rendered invalid by the ballot paper being placed in the box intended for the reception of ballot papers for parish councillors.

(3.) The ballot papers used at the election of rural district councillors for the parish shall be of a different colour from that of any ballot papers used in the election of parish councillors held in the parish at the same date.

Adaptation of Municipal Corporations Act, 1882.

26.—(1.) The provisions of sections 74 and 75 of the Municipal Corporations Act, 1882, which, with adaptations and alterations, are set out in the Third Schedule to this Order, and such of the provisions of that Act as relate to the acceptance of office, re-eligibility of holders of office, and filling of casual vacancies, and are, with adaptations and alterations, set out in the Fourth Schedule to this Order,

shall, subject to such adaptations and alterations, apply to the election of rural district councillors and to the persons elected thereat. Appendix.

(2.) In the application of Part IV. of the Municipal Corporations Act, 1882 (relating to corrupt practices and election petitions), (a) as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, (b) the following adaptations and alterations shall have effect:—

- (a.) Such application shall be subject to the provisions of this Order.
- (b.) References to the election of rural district councillors shall be substituted for references to a municipal election or to an election to a corporate office. “Parish or united parishes,” and in section 93 (2) “poor law union” shall be substituted for “borough,” “poor rate of the parish or poor rates of the united parishes” shall be substituted for “borough fund or borough rate,” the “returning officer” shall be substituted for the “town clerk,” and “voter” shall mean “a parochial elector, or a person who votes or claims to vote at an election of rural district councillors.”
- (c.) In the application of sub-section (2) of section 89, (c) such sub-section shall be adapted and altered so as to read as follows:—
 “(2.) The security shall be to the amount of fifty pounds, unless in any case the High Court or a judge thereof, on summons, order that the same shall be to a lesser amount, or to a larger amount not exceeding three hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.”

Adaptation of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

27. In the application of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, (d) the following adaptations and alterations shall have effect:—

- (1.) Such application shall be subject to the provisions of this Order.
- (2.) The expressions “parish or united parishes,” “returning officer of rural district councillors,” and “poor rate of the parish or poor rates of the united parishes” shall be deemed to be substituted in the Act for “borough,” “town clerk,” and “borough fund or rate,” respectively.
- (3.) The expression “corporate office” in the Act shall mean “the office of rural district councillor,” and “a municipal election” shall mean “an election of one or more rural district councillors”; and the expressions “municipal election court,” “municipal election list,” and “municipal election petition” shall be construed accordingly.
- (4.) So much of section 13 of the Act (e) as permits one polling agent to be employed in each polling station shall not apply, except so far as the employment of polling agents is permitted by Rule 18 of this Order.
- (5.) An election petition complaining of the election on the ground of an illegal practice may be presented at any time within six weeks after the day of election.
- (6.) A petition relating to the election of a rural district councillor for a parish may be tried at any place within the poor law union in which the parish is situate.
- (7.) Nothing in the Act shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to the office of rural district councillor on any licensed or other premises not situate in an urban district or in the administrative county of London.
- (8.) Section 37 of the Act (f) shall be read as if a reference to an election of rural district councillors was substituted for a reference to any of the elections mentioned in the First Schedule to the Act.

(a) *Ante*, p. 1133.

(b) *Ante*, p. 1177.

(c) *Ante*, p. 1136.

(d) *Ante*, p. 1177.

(e) *Ante*, p. 1180.

(f) *Ante*, p. 1193.

Appendix.*Expenses.*

28.—(1.) Any sum which may be payable to the returning officer in respect of his services in taking a poll in the parish, or in respect of expenses incurred in relation to such poll, shall be defrayed by the rural district council of the district, and shall be charged to the parish in their accounts and shall be raised in like manner as any sums payable by the parish in respect of the general expenses of the rural district council.

(2.) Any other sum which may be payable to the returning officer in respect of his services in the conduct of the election, or in respect of expenses incurred in relation to the election, shall be defrayed by the rural district council of the district, and shall be charged in their accounts as general expenses.

(3.) If a poll for the election of rural district councillors and of any parish councillors is taken at the same date in the parish, one half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, shall be deemed to have been incurred in relation to the poll for the election of rural district councillors, and shall be defrayed accordingly.

If Parish in more than one County.

29. If the parish is situate in more than one administrative county, it shall for the purposes of this Order be deemed to be wholly situate in the county which, according to the census of one thousand eight hundred and ninety-one, contains the larger part of its population.

Wards.

30.—(1.) If the parish is divided into wards for the election of rural district councillors, the Rules in this Order shall, except as otherwise provided, apply to each of such wards as if it were a parish.

(2.) Provided that if the parish is so divided, an elector shall not be permitted to vote in more than one ward.

(3.) Provided also that any sum which in pursuance of this Rule and of Rule 28 (1) would be charged to any ward shall be charged to the parish in which the ward is situate and shall be raised accordingly.

United Parishes.

31.—(1.) If the parish is united with any other parish for the election of rural district councillors the Rules in this Order shall, subject as hereinafter mentioned, apply as if such parishes formed the parish.

(2.) The questions which under Rule 19 the presiding officer may, and if required by any parochial elector, or any polling agent appointed under Rule 18, shall, put to any elector shall be as follows:—

(a.) Are you the person entered in the parochial register for one of the united parishes, viz., the parish of _____ as follows [read the whole entry from the register]?

(b.) Have you already voted at the present election of rural district councillors in either of the united parishes of _____ and _____, or in any other parish or ward in the rural district of _____?

(3.) Any sum which in pursuance of this Rule and of Rule 28 (1), would be charged to the united parishes shall be divided between them in proportion to the number of parochial electors registered in such parishes respectively, and shall be raised accordingly.

Publication of Notices.

32. Any public notice required by this Order shall be given by posting the same on or near the principal door of each church and chapel in the parish, and in some conspicuous place or places within the parish.

*Mark instead of Signature.***Appendix.**

33. In place of any signature required by this Order, it shall be sufficient for the signatory to affix his mark, if the same is witnessed by two parochial electors.

Misnomer.—Inaccurate Descriptions.

34. No misnomer or inaccurate description of any person or place named in any notice or nomination paper under this Order shall hinder the full operation of such notice or paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood.

And We do hereby further direct that this Order may be cited as the “Rural District Councillors Election Order, 1896.”

FIRST SCHEDULE.

FORM NO. 1.

Notice of Election.

RURAL DISTRICT OF .

ELECTION OF RURAL DISTRICT COUNCILLORS for the several Parishes, United Parishes and Wards of Parishes [*as the case may be*], hereinafter mentioned.

NOTICE IS HEREBY GIVEN THAT—

- 1.* The day of election of Rural District Councillors for the said Parishes, United Parishes and Wards of Parishes [*as the case may be*] will be , the day of , 1896.
2. The number of Rural District Councillors to be elected for the said Parishes, United Parishes and Wards [*as the case may be*] is as follows† :—
3. Each candidate for election as a Rural District Councillor must be nominated in writing, and the nomination paper must be sent to me, so that it shall be received at (which is my office for the purpose of the election) not later than four o'clock in the afternoon of Monday, the 16th day of March, 1896.
4. A parochial elector must not sign more nomination papers than there are Rural District Councillors to be elected for the Parish or United Parishes or Ward [*as the case may be*], and he must not sign a nomination paper for any Parish or United Parishes or Ward unless he is registered as a parochial elector in respect of a qualification therein. Neither must he sign nomination papers for more than one Parish or group of United Parishes or Ward in the Rural District.
5. Forms of nomination paper may be obtained, free of charge, either from me at the above-named office, or from the Overseers of the Parish or either of the United Parishes for which a nomination is proposed to be made.
6. The nomination paper must be in the following form, or in a form to the like effect :—

* If the day of election is not the same for all the parishes, united parishes, and wards, adapt form accordingly.

† Insert here the names of the parishes, united parishes, and wards of parishes, with the number of rural district councillors to be elected for each. A tabular form may be used if preferred.

Appendix.

FORM OF NOMINATION PAPER.

RURAL DISTRICT OF .
ELECTION OF RURAL DISTRICT COUNCILLORS for the Parish of [or for the United
Parishes of , or for the Ward of the Parish of] in the
year 1896.

We, the undersigned, being respectively parochial electors of the said Parish [or
United Parishes or Ward], do hereby nominate the under-mentioned person as a
candidate at the said Election.

Names of Candidate.		Place of Abode.	Description.	How qualified (specify qualification according to direction in Instruction 5).
Surname.	Other Names in full.			
1.	2.	3.	4.	5.

Signature of PROPOSER . .
Place of Abode . .
Signature of SECONDER . .
Place of Abode . .

Instructions for filling up Nomination Paper.*

1. The surname of only one candidate for election must be inserted in Column 1.
2. The other names of the candidate must be inserted in full in Column 2.
3. Insert in Column 3 the place of abode of the candidate.
4. In Column 4 state the occupation, if any, of the candidate. If the candidate has no occupation, insert some such description as "gentleman," or "married woman," or "spinster," or "widow," as the case may be.
5. If the candidate is a parochial elector of some Parish within the Union in which the Rural District or the part of the Rural District comprising the Parish is situate (that is, if his or her name is registered in the register of parochial electors of such Parish) insert in Column 5 "Parochial Elector of Parish of ." If the candidate is not a parochial elector of some Parish in that Union, but he or she has, during the whole of the twelve months preceding the election, resided in the Union, insert in Column 5 "Residence." If the candidate is not a parochial elector of some Parish within the Union, and has not during the whole of the twelve months preceding the election resided in the Union but he is qualified to be elected a councillor for some municipal borough wholly or partly situate in the Union, insert in Column 5 "Qualified to be elected Councillor of Borough of ." If the candidate has more than one of these qualifications, it will be sufficient to insert in Column 5 one of his or her qualifications, but more may be inserted.
- 6.—(1.) The paper must be signed by two parochial electors of the Parish [or United Parishes or Ward], and no more; by one as proposer, and by the other as seconder. The places of abode of the Proposer and Seconder must also be inserted. Instead of signing, the Proposer or Seconder may affix his mark, if it is witnessed by two parochial electors.
(2.) A parochial elector must not sign more nomination papers than there are Rural District Councillors to be elected for the Parish [or United Parishes or Ward], and he must not sign a nomination paper for any Parish [or United Parishes or Ward] unless he is registered as a parochial elector in respect of a qualification therein. Neither must he sign a nomination paper in more than one Parish [or group of United Parishes or Ward] in the Rural District.
7. Not later than Wednesday, the 18th day of March, 1896, I shall cause a copy of a statement containing the names, places of abode, and descriptions of the persons nominated for the office of Rural District Councillor for the said Parishes,

* These instructions form part of the nomination paper.

Appendix. to be elected as Rural District Councillors for the said Parish [*or Ward or United Parishes*], I do hereby give notice that a Poll will not be taken, and that [*insert names*] will be declared elected as Rural District Councillors for the said Parish [*or Ward or United Parishes*].

Dated this day of March, 1896. _____, Returning Officer.

FORM No. 4.

Notice of Poll.

[This form relates to a Poll for the election of Rural District Councillors only.]

RURAL DISTRICT OF
ELECTION OF RURAL DISTRICT COUNCILLORS in the year 1896.
PARISH OF [*or Ward of the Parish of* *or United Parishes of*].

NOTICE IS HEREBY GIVEN—

- 1. That a Poll for the election of Rural District Councillors for the above-named Parish [*or Ward or United Parishes*] will be held on the day of , 1896, between the hours of and .
- 2. That the number of Rural District Councillors to be elected for the Parish [*or Ward or United Parishes*] is .
- 3. That the names in alphabetical order, places of abode, and descriptions of the Candidates for election, and the names of their respective Proposers and Seconders are as follows :—

Names of Candidate (Surname first).*	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* Insert particulars as to each candidate for the parish or ward or united parishes whose nomination is valid, and who has not withdrawn his candidature.

† If the parish or ward or united parishes are not divided into polling districts for the purposes of the election, paragraph 4 should be omitted.
‡ If only one polling place or station, adapt form accordingly.

- 4.†—(1.) That each elector must vote in the Polling District in which the property in respect of which he votes is situate, and if it is situate in more than one Polling District he may vote in any one (but in one only) of such Polling Districts.
(2.) The Polling Districts are as follows :—
- 5.‡ The situation and allotment of the Polling Places, and the description of the persons entitled to vote thereat and at the several Polling Stations, are as follows :—
- 6. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election will be [*insert colour*].

Dated this day of March, 1896. _____, Returning Officer.
_____, Office for purpose of election.

FORM No. 5.

Notice of Poll.

[This form relates to a poll for the election of Parish Councillors and Rural District Councillors for the same area.]

ELECTION OF PARISH AND RURAL DISTRICT COUNCILLORS for the Parish of [or for the Ward of the Parish of] in the year 1896.

NOTICE IS HEREBY GIVEN—

- 1. That polls for the election of Parish and Rural District Councillors for the above-named Parish [or Ward] will be held on , the day of , 1896, between the hours of and .
- 2. That the number of Parish Councillors to be elected for the Parish [or Ward] is .
- 3. That the number of Rural District Councillors to be elected for the Parish [or Ward] is .
- 4. That the names in alphabetical order, places of abode, and descriptions of the Candidates for election, and the names of their respective Proposers and Seconders are as follows :—

AS PARISH COUNCILLORS.

Names of Candidate (Surname first).*	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

* Insert particulars as to each candidate whose name was put to the parish meeting, and who has not withdrawn his candidature.

AS RURAL DISTRICT COUNCILLOR[s].

Names of Candidate (Surname first).	Place of Abode.	Description.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

- †5. (1.) That each elector must vote in the Polling District in which the property in respect of which he votes is situate, and if it is situate in more than one Polling District he may vote in any one (but in one only) of such Polling Districts.
(2.) The Polling Districts are as follows :—
- †6. The situation and allotment of the Polling Places and the description of the persons entitled to vote thereat and at the several Polling Stations are as follows :—

+ If the parish or ward is not divided into polling districts for the purposes of the election, paragraph 5 should be omitted.
‡ If only one polling place or station, adapt form accordingly.

Appendix.

7. The poll will be taken by ballot, and the colour of the ordinary ballot paper used in the election of Parish Councillors will be [insert colour], and in the election of Rural District Councillors will be [insert colour].

Dated this day of March, 1896.

_____, Office for purpose of election. _____, Returning Officer.

FORM No. 6.

Declaration of Result of Poll.

RURAL DISTRICT OF

ELECTION OF RURAL DISTRICT COUNCILLORS in the year 1896.

PARISH OF [or Ward of the Parish of or United Parishes of].

I, the undersigned, being the Returning Officer [or Deputy Returning Officer duly authorised in that behalf] at the poll for the election of Rural District Councillors for the said Parish [or Ward, or United Parishes] held on the day of , 1896, do hereby give notice that the number of votes recorded for each candidate at the election is as follows :—

Names of Candidates.		Places of Abode.	Number of Votes recorded.
Surnames.	Other Names.		

And I do hereby declare that the said are duly elected Rural District Councillors for the said Parish [or Ward or United Parishes].

Dated this day of , 1896.

_____, Returning Officer
[or Deputy Returning Officer].

FORM No. 7.

Notice of Result of Elections.

RURAL DISTRICT OF

ELECTION OF RURAL DISTRICT COUNCILLORS in the year 1896.

I, the undersigned, being the Returning Officer at the election of Rural District Councillors for the said District, do hereby give notice that the candidates whose names are entered in Column 6 of the Statement hereunder, opposite to the names of Parishes, Wards, and United Parishes in which polls have been taken, have been declared duly elected Rural District Councillors; and I hereby declare that the candidates whose names are entered in the said column opposite to the names of Parishes, Wards, and United Parishes where no polls have been taken, were duly elected Rural District Councillors for the same.

Parishes, Wards, and United Parishes. 1.	Names of Candidates.		Places of Abode. 4.	Number of Votes recorded. 5.	Names of Candidates elected. 6.
	Surnames. 2.	Other Names. 3.			

Dated this day of , 1896.

_____, Returning Officer.

Appendix.

SECOND SCHEDULE.

PROVISIONS OF THE BALLOT ACT, 1872, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF RURAL DISTRICT COUNCILLORS.

PROCEDURE AT ELECTIONS OF RURAL DISTRICT COUNCILLORS.

Poll at Elections.

2. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

If in the register of parochial electors for a parish, the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the register is entered on the counterfoil of a ballot paper, the mark on that part shall also be entered thereon.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

OFFENCES.

Offences in respect of Ballot Papers and Ballot Boxes.

3. Every person who—

- (1.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or
- (2.) Without due authority supplies any ballot paper to any person; or
- (3.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
- (4.) Fraudulently takes out of the polling station any ballot paper; or
- (5.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Infringement of Secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of parochial electors of any elector

Appendix.

who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

USE OF SCHOOL AND PUBLIC ROOM FOR POLL.

6. The returning officer at an election of rural district councillors may use, free of charge, for the purpose of taking the poll or for counting the votes at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll or for counting the votes as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

DUTIES OF RETURNING AND ELECTION OFFICERS.

General Powers and Duties of Returning Officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of parochial electors and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting the election.

Keeping of Order in Station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Powers of Presiding Officer and Administration of Oaths, &c.

10. For the purpose of the adjournment of the poll, a presiding officer shall have the power by law belonging to a deputy returning officer in a parliamentary election; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Liability of Officers for Misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition

to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds. Appendix.

No returning officer or officer appointed by him in connexion with the election of rural district councillors for any rural district, nor any partner or clerk of any such officer, shall act as agent for any candidate in the management or conduct of his election as rural district councillor. If any returning officer or officer appointed by him, or the partner or clerk of any such officer, shall so act he shall be guilty of a misdemeanor.

MISCELLANEOUS.

Prohibition of Disclosure of Vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Non-compliance with Rules.

13. No election shall be declared invalid by reason of a defect in the title or appointment of the returning officer or deputy returning officer or of a non-compliance with the rules contained in the First Schedule to this Act or in the Rural District Councillors Election Order, 1896, or any mistake in the use of the forms in the Second Schedule to this Act or in the said Order, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act and of the Local Government Act, 1894, and that such non-compliance or mistake did not affect the result of the election.

PERSONATION.

Definition and Punishment of Personation.

24. The following enactments shall be made with respect to personation at an election of rural district councillors:—

It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

Sections 86 to 89, both inclusive, of the Parliamentary Voters Registration Act, 1843, shall apply to personation at an election of rural district councillors in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Act, but with the substitution of the words “any parochial elector or any agent appointed under the Rural District Councillors Election Order, 1896,” for “any such agent so appointed as aforesaid” or for any reference to any such agent, and of “the presiding officer” for “the returning officer or his respective deputy.”

EFFECT OF SCHEDULES.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

SCHEDULES TO ACT.

FIRST SCHEDULE TO ACT.

RULES FOR ELECTIONS OF RURAL DISTRICT COUNCILLORS.

The Poll.

15. At every polling place the returning officer shall, subject to the provisions of the Rural District Councillors Election Order, 1896, provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient.

Appendix.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret.

21. The presiding officer appointed to preside at each station shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector, together with the distinguishing mark, if any, of the part of the register in which the number occurs shall, as required by section 2 of this Act as adapted be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or on the application before sunset (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions permitted by the Rural District Councillors Election Order, 1896, to be asked of voters at the time of polling, and upon taking an oath in the form hereinafter set out, which the presiding officer shall administer, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called "the tendered votes list."

The oath shall be administered in the following form:—

Appendix.

“You do swear that you are the same person whose name appears as *A.B.* on the Register of Parochial Electors for the Parish of [or Ward of the Parish of], and that you have not already voted at the present election of Rural District Councillors in this or any other Parish or Ward in the Rural District.

“SO HELP YOU GOD.”

Provided that any person entitled to affirm in lieu of taking an oath may affirm in the following form:—

“I, *A.B.*, do solemnly, sincerely, and truly declare and affirm that I am the same person whose name appears as *A.B.* on the Register of Parochial Electors for the Parish of [or Ward of the Parish of], and that I have not already voted at the present election of Rural District Councillors in this or any other Parish or Ward in the Rural District.”

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoiled ballot paper), and the ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,—

- (1.) Each ballot box in use at his station, unopened but with the key attached; and
- (2.) The unused and spoiled ballot papers, placed together; and
- (3.) The tendered ballot papers; and
- (4.) The marked copies of the register of parochial electors, and the counterfoils of the ballot papers; and
- (5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads “physical incapacity,” “Jews,” and “unable to read,” and the declarations of inability to read;

and shall deliver such packets to the returning officer, or deputy returning officer, by whom the votes are to be counted, unless he is himself such officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoiled, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. Each candidate may appoint an agent to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, the agents of the candidates, any person to whom Rule 51 of this Schedule applies and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. If a poll has been taken as to the election of rural district councillors only, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. If polls have been taken at the same date for the election both of rural district councillors and of parish councillors, before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open one of the ballot boxes and taking out the papers therein shall separate those relating to the election of rural district councillors from any relating to the election of parish councillors, and shall count and record the number of ballot papers relating to each election. He shall then secure the ballot papers relating to each election by placing them in separate packets under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall proceed in like manner with any other ballot boxes and the papers therein. When all the ballot boxes and the papers therein have been so dealt with, he shall open all the packets of ballot papers relating to one election, and shall mix all such papers together, and shall proceed to count the votes, keeping the papers relating to any other election sealed up until he has completed such counting. He shall afterwards deal in manner aforesaid with the packets and papers relating to the other election or elections.

The returning officer, while counting and recording the number of ballot papers and

Appendix. counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall draw up a statement showing the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates to copy such statement. If the votes are counted by a deputy returning officer he shall, with the declaration of the result of the poll, report to the returning officer the number of ballot papers rejected and not counted by him, under the above heads, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall draw up a statement as to the result of such verification, and shall, on request, allow any agents of the candidates to copy it.

If the votes are counted by a deputy returning officer, he shall report to the returning officer the result of the verification, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it. He shall, with his report, send to the returning officer the sealed packets of counted and rejected ballot papers, and the unopened sealed packets which he has received from any presiding officer.

38. Lastly, the returning officer shall carefully preserve for the period hereinafter mentioned all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the parish for which such election was held.

39. The returning officer shall retain for six months all documents relating to an election of rural district councillors, and then, unless otherwise directed by an order of the county court having jurisdiction in the rural district or in any part thereof, or of any tribunal in which the election is questioned, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the returning officer, except under the order of the county court or tribunal aforesaid, to be granted by such court or tribunal on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return ; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the court or tribunal making the same may think expedient, and shall be obeyed by the returning officer.

41. No person shall, except by order of the county court having jurisdiction in the rural district or any part thereof, or of any tribunal having cognizance of any question relating to the election, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the returning officer. Such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the court or tribunal making the order may think expedient : Provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered

until he has been proved to have voted, and his vote has been declared by a competent court to be invalid. Appendix.

42. All documents in the custody of a returning officer in pursuance of this Act, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may have been or may hereafter be prescribed by the council of the county in which the parish is situate, and the returning officer shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may have been or may hereafter be prescribed by the county council.

43. Where an order is made for the production by the returning officer of any document in his possession relating to any specified election of rural district councillors, the production by such officer or his agent of the document ordered, in such manner as may be directed by such order, or by an order of the court having power to make such first-mentioned order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such returning officer or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

43 (a.) There shall be an appeal from any order of the county court under these rules in like manner as in other cases in such court.

General Provisions.

47. If the returning officer presides at any polling station, the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his, if appointed under Rule 31 of this Schedule, might have undertaken, and may, if he does not appoint such an agent, be present at the counting of the votes, or may himself take the place of such agent.

Provided that any person acting under this Rule may at any time before so acting make the statutory declaration required by Rule 54 of this Schedule, but he shall not so act until he has made such declaration.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent for the purposes of attending a polling station, or at the counting of the votes dies, or becomes incapable of acting during the time of the election, another agent may be appointed in his place, and notice shall forthwith be given to the returning officer in writing of the name and address of any agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, and also every officer, clerk, or agent authorised to attend at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where

Appendix. — such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

SECOND SCHEDULE TO ACT.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Counterfoil
No.

*NOTE :—
The counter-foil is to have a number to correspond with that on the back of the Ballot Paper.*

Form of Ballot Paper.
Form of Front of Ballot Paper.
ELECTION OF RURAL DISTRICT COUNCILLORS.

1	ADAMS (Walter Adams, of Green Farm, Farmer.)	
2	HIGGINS (William Henry Higgins, of Mudford, Agricultural Labourer.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Wilts, Gentleman.)	
4	PRITCHARD (Jane Pritchard, of Rose Villa, Married Woman.)	

No.

Form of Back of Ballot Paper.

Election of Rural District Councillors for or Ward of	Parish [or	United Parishes,
	Parish].	
	, 1896.	

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, and the names, places of abode, and descriptions, and the number on the back of the paper, shall be printed in small characters.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

The voter may vote for candidates as rural district councillors.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus **X**.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidates, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

Appendix.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare, That I will not at this election of rural district councillors for the Parish of [or United Parishes of , or Ward of the Parish of], do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration. One declaration may be made by the Returning Officer in respect of all the Parishes for which he is Returning Officer.

Form of Declaration of inability to read.

I, A. B., of , being numbered on the Register of Parochial Electors for the Parish of , do hereby declare that I am unable to read.

A. B., his mark.

day of , 1896.

I, the undersigned, being the presiding officer for the polling station for the Parish of [or United Parishes of , or Ward of the Parish of] do hereby certify that the above declaration, having been first read to the above-named A. B., was signed by him in my presence with his mark.

Signed, C. D.,
Presiding Officer for polling station for the
Parish of [or United Parishes of
or Ward of the Parish of].

day of , 1896.

THIRD SCHEDULE.

SECTIONS 74 AND 75 OF THE MUNICIPAL CORPORATIONS ACT, 1882, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF RURAL DISTRICT COUNCILLORS.

Offences in relation to Nomination Papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the Returning Officer any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

'Neglect of Duty by Returning Officer or Deputy Returning Officer.

75.—(1.) If a person who has undertaken to act as returning officer, or deputy returning officer, at an election of rural district councillors, neglects or refuses to conduct or declare the election in manner provided by the Local Government Act, 1894, and the Rural District Councillors Election Order, 1896, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2.) An action under this section shall not lie after three months from the neglect or refusal.

Appendix.

FOURTH SCHEDULE.

PROVISIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882, RELATING TO THE ACCEPTANCE OF OFFICE, RE-ELIGIBILITY OF HOLDERS OF OFFICE, AND FILLING OF CASUAL VACANCIES, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF RURAL DISTRICT COUNCILLORS.

Obligation to accept Office or pay Fine.

34.—(1.) Every qualified person elected to the office of rural district councillor, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within one month after notice of election, or shall, in lieu thereof, be liable to pay to the district council a fine of such amount, not exceeding fifty pounds, as the district council by regulations determine, and such fine shall be placed to the credit of the Parish for which the person fined was elected.

(2.) If there are no regulations determining fines, the fine shall be twenty pounds.

(3.) The persons exempt under this section are—

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body.

(4.) A fine payable under this section shall be recoverable summarily.

(5.) If a person is elected rural district councillor in more than one parish or other area in the rural district for which the election is held, he shall not accept office in respect of more than one of such areas, and if he accepts office or pays the fine for non-acceptance of office in respect of one of such areas, he shall not be liable to a fine for non-acceptance of office in respect of any other of such areas.

(6.) Any person who has been elected without his consent to his nomination being previously obtained shall not be liable to a fine under this section.

Declaration on Acceptance of Office.

35. A person elected to the office of rural district councillor shall not, until he has made and subscribed before two members of the district council, or the clerk to the district council, or, if he is absent from the United Kingdom, before a British Consul, a declaration in the following form, or in a form to the like effect, act in the office except in administering that declaration :—

FORM OF DECLARATION ON ACCEPTANCE OF OFFICE.

I, *A. B.*, having been elected rural district councillor for the rural district of _____, in respect of the Parish of _____ [or of the United Parishes of _____ and _____, or of the _____ Ward of the Parish of _____], hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

Dated this _____ day of _____, 1896.

* If the declaration is made and subscribed before the clerk or a consul, adapt form accordingly.

This Declaration was made and subscribed before us*

Members of the District Council of the { _____
above-named District. { _____

Power to receive Declaration.

239.—(1.) Members of the district council or the clerk or a British Consul shall have authority to receive the declaration required to be made by a rural district councillor without any commission or authority other than this Act.

(2.) The declaration, if made before a British Consul, shall be forthwith sent to the clerk to the district council.

Penalty on acting in office without making Declaration.

41.—(1.) If any person acts in the office of rural district councillor without having made the declaration by this Act required, he shall for each offence be liable to a fine not exceeding twenty pounds, recoverable by action.

Re-eligibility of Office-holders.

37. A person ceasing to hold the office of rural district councillor shall, unless disqualified to hold the office, be re-eligible.

Appendix.*Filling of Casual Vacancies.*

40.—(1.) On a casual vacancy in the office of rural district councillor, an election shall be held in accordance with rules framed under the Local Government Act, 1894; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of rural district councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the district council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

Time for filling Casual Vacancies.

66.—(1.) On a casual vacancy in the office of rural district councillor, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the district council or to the clerk by two councillors.

(3.) The day of election shall be fixed by the clerk to the district council.

(4.) Nothing in this Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.

Given under the Seal of Office of the Local Government Board, this Nineteenth day of February, in the year One thousand eight hundred and ninety-six.

(L.S.) HENRY CHAPLIN, *President.*

HUGH OWEN, *Secretary.*

ELECTRIC LIGHTING.

BOARD OF TRADE REGULATIONS FOR PUBLIC SAFETY—1889.

(*Ante*, p. 1231.)

BOARD OF TRADE RULES—APPLICATIONS FOR LICENCES AND PROVISIONAL ORDERS—August, 1890. (*Ante*, p. 1170.)

GAS AND WATER WORKS.

See "PROVISIONAL ORDERS."

Appendix

HOUSING OF THE WORKING CLASSES.^(a)HOUSING OF THE WORKING CLASSES ACT, 1890 (FORMS OF
ADVERTISEMENTS AND NOTICES)—GENERAL ORDER.

(2nd October, 1890.)

TO THE SEVERAL URBAN SANITARY AUTHORITIES FOR THE TIME BEING IN
ENGLAND AND WALES;—

And to all others whom it may concern.

WHEREAS by section 8 of the Housing of the Working Classes Act, 1890,^(b) We, the Local Government Board, are constituted the confirming authority for every improvement scheme made by an urban sanitary authority in pursuance of Part I. of that Act:

And whereas by section 27 of the same Act^(c) it is enacted that the confirming authority may, by order, prescribe the forms of advertisements and notices under Part I. of that Act; and that it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of that part of the said Act:

Now, therefore, We, the Local Government Board, do, by this our Order, prescribe the forms of advertisements and notices hereinafter set out, and declare that they may be adopted by any urban sanitary authority for the purposes of Part I. of the said Act.

I.—FORM OF ADVERTISEMENT.

The urban sanitary district of .

Housing of the Working Classes Act, 1890.
(53 & 54 Vict. c. 70.)

Advertisement of an Improvement Scheme.

Notice is hereby given that , being the sanitary authority for the urban sanitary district of , have, in pursuance of the Housing of the Working Classes Act, 1890, made a scheme for the improvement of the area or areas, the limits of which are stated in the schedule hereunder, and which contains or contain by estimation—

A copy of the said scheme, accompanied by maps distinguishing the land proposed to be taken compulsorily, and by particulars and estimates, has been deposited at* and may be seen at all reasonable hours.

SCHEDULE.

†The area to which the scheme relates is bounded as follows—
on the north by , on the south by , on the east by , on the
west by .

or

(a) See also *sub tit.* "Provisional Orders," *post.*

(b) *Ante*, p. 604.

(c) *Ante*, p. 617.

The area to which the scheme relates is bounded by a line commencing (*set out the entire linear boundary*): **Appendix.**

or
The area to which the scheme relates consists of the following streets and other places or parts thereof:

(Signed) Town Clerk *or* Clerk to the
(*as the case may be*).

Dated day of .

* The place of deposit must be within the area, or in the vicinity thereof. See section 7 (a) of the Act.

† One of these forms should be adopted, and where the scheme includes more than one area, the particulars indicated should be furnished as regards each area.

II.—FORM OF NOTICE TO OWNERS AND LESSEES.

The urban sanitary district of .

Housing of the Working Classes Act, 1890.
(53 & 54 Vict. c. 70.)

Notice to owner or reputed owner, lessee or reputed lessee, of intention to take lands compulsorily under an improvement scheme.

To

Take notice that a petition is about to be presented by the , being the sanitary authority for the urban sanitary district of , to the Local Government Board in pursuance of the Housing of the Working Classes Act, 1890, praying that an order may be made confirming an improvement scheme, whereby it is proposed to take compulsorily the lands described in the schedule hereunder, in which you are believed to be interested, as owner or reputed owner, or lessee or reputed lessee.

You are, therefore, hereby required to return to me on or before the day of next, an answer in writing whether you dissent or not in respect of the taking of the lands described in the said schedule.

A copy of the said scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at* , and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing notice.

Name of Street, Court, Alley, or other Place.	Description of lands+ proposed to be taken.	Owner or reputed Owner.	Lessee or reputed Lessee.	Occupier.

(Signed) Town Clerk *or* Clerk to the
(*as the case may be*).

Dated day of .

* The place of deposit must be within the area, or in the vicinity thereof. See section 7 (a) of the Act.

† Lands include messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.

Appendix.

III.—FORM OF NOTICE TO OCCUPIERS.

The urban sanitary district of .

Housing of the Working Classes Act, 1890.

(53 & 54 Vict. c. 70.)

Notice to occupier or occupiers (not being owners or reputed owners, or lessees or reputed lessees) of an intention to take lands compulsorily under an improvement scheme.

To A.B., the occupier of the .

[To the occupier or occupiers of the house]^{or}(*) which, in the schedule hereunder, is described as the lands proposed to be taken .

Take notice that a petition is about to be presented by the , being the sanitary authority for the urban sanitary district of , to the Local Government Board in pursuance of the Housing of the Working Classes Act, 1890, praying that an order may be made confirming an improvement scheme, whereby it is proposed to take compulsorily the lands described in the schedule hereunder.

A copy of the said scheme, accompanied by maps distinguishing the lands proposed to be taken compulsorily, and by particulars and estimates, has been deposited at(†) , and may be seen at all reasonable hours.

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other Place.	Description of Lands(‡) proposed to be taken.

(Signed) Town Clerk or Clerk to the
(as the case may be).

Dated . day of .

Given under the Seal of Office of the Local Government Board, this Second day of October, in the year one thousand eight hundred and ninety.

(L.S.)

CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

* The alternative address within these brackets is available only where the property to be taken is a house.

† The place of deposit must be within the area, or in the vicinity thereof. See section 7 (a) of the Act.

‡ Lands include messuages, tenements, hereditaments, houses, and buildings of any tenure, and any right over land.

Appendix**MARGARINE.****MARGARINE ACT, 1887: REGISTRATION OF MANUFACTORIES—
CIRCULAR.**

(24th December, 1887.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

24th December, 1887.

SIR,—I am directed by the Local Government Board to advert to the Margarine Act, 1887, which will come into operation on the first of January, 1888, and which requires, by section 9, that every manufactory of margarine in England and Wales shall be registered by the owner or occupier thereof with the local authority from time to time in such manner as the Board may direct.(a)

The Board have accordingly issued an Order, two copies of which are enclosed, directing the manner in which the registration of manufactories of margarine is to be made in England and Wales.

I am directed to add that the term “local authority” is defined by section 13 of the Act(b) as meaning any local authority authorized to appoint a public analyst under the Sale of Food and Drugs Act, 1875.

I am, Sir, your obedient Servant,
HUGH OWEN, *Secretary*.

The Clerk to the Local Authority.

**MARGARINE ACT, 1887: REGISTRATION OF MANUFACTORIES—
GENERAL ORDER.**

(22nd December, 1887.)

TO THE OWNERS AND OCCUPIERS for the time being of Manufactories of Margarine in England and Wales to which the Margarine Act, 1887, applies;—

To the several Local Authorities under the said Act for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887(a) (which will come into operation on the 1st day of January, 1888), provision is made for the registration with the local authority of every manufactory of margarine (as defined by the said Act) in England and Wales from time to time in such manner as We, the Local Government Board, may direct;

And whereas by section 13 of the said Act(b) the expression “local authority” is defined as meaning “any local authority authorized to appoint a public analyst under the Sale of Food and Drugs Act, 1875,” and the local authorities authorized to appoint a public analyst under the last-named Act are as follows, namely:—In the City of London and the liberties thereof the Commissioners of Sewers of the City of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis; the court of quarter sessions for every county; and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament, or otherwise, a separate police establishment:(c)

(a) *Ante*, p. 1211.(b) *Ante*, p. 1212.(c) See 38 & 39 Vict. c. 63, s. 10, *ante*, p. 1010.

Appendix. Now therefore, We, the Local Government Board, hereby order and direct as follows:—

ARTICLE 1.—Every owner or occupier of a manufactory of margarine in England and Wales who shall make application to the proper local authority for a certificate of registration under the said Margarine Act, 1887, shall, in his application, state the following particulars:—

- (a.) The name and address of the owner or occupier making the application.
- (b.) The situation of the manufactory.
- (c.) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers carrying on the manufacture.

Every such application shall be signed by the person making the same, or by some one acting on his behalf.

ARTICLE 2.—If the application is in due form, the local authority shall cause the manufactory to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 3.—Where any change occurs in the persons carrying on the manufacture, written notice thereof shall be given by the owner or occupier of the manufactory to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said schedule.

ARTICLE 4.—This Order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight, and shall remain in force until We shall otherwise direct.

SCHEDULE.

FORM (A.)

Certificate under the Margarine Act, 1887.
(50 & 51 Vict. c. 29.)

This is to certify that the manufactory known as the _____ situate at _____, at which the manufacture of margarine is at present carried on by _____, the owner [or occupier] thereof, has been duly registered by [here insert the name of the local authority within whose district the manufactory is situate] in accordance with the provisions of the Margarine Act, 1887, in that behalf, on the application of _____.

Dated this _____ day of _____, in the year one thousand eight hundred and eighty _____.

Signed _____
Clerk to the [here insert name of local authority].

FORM (B.)

Endorsement on Certificate in case of Change in Persons carrying on the Manufacture.

This is to certify that _____ has been duly registered as the owner [or occupier] carrying on the manufacture of margarine in the within-named manufactory in the place of _____.

Dated this _____ day of _____, in the year one thousand eight hundred and eighty _____.

Signed _____
Clerk to the [here insert name of local authority].

Given under the Seal of Office of the Local Government Board, this twenty-second day of December, in the year one thousand eight hundred and eighty-seven.

(L.S.)

CHAS. T. RITCHIE, *President.*

HUGH OWEN, *Secretary.*

Date of publication in the London Gazette, 23rd December, 1887.

OFFICERS.

GENERAL ORDER (URBAN SANITARY AUTHORITIES).

(23rd March, 1891.)

REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH AND INSPECTORS OF
NUISANCES.(a)

TO THE SEVERAL URBAN SANITARY AUTHORITIES, for the time being
in England and Wales ;—

And to all others whom it may concern.

WHEREAS by General Orders dated the 11th day of November, 1872, addressed to the several urban sanitary authorities in England and Wales constituted by the Public Health Act, 1872, We, the Local Government Board, acting under the authority conferred upon Us by section 10 of that Act, prescribed regulations with respect to the qualification, appointment, duties, salary, and tenure of office of medical officers of health appointed by urban sanitary authorities, and with respect to the appointment, duties, salary, and tenure of office of inspectors of nuisances appointed by such authorities, in all cases where any portion of the salary of such officer was paid out of moneys voted by Parliament.

And whereas it is required by section 189 of the Public Health Act, 1875,(b) that every urban sanitary authority shall from time to time appoint a medical officer of health, and an inspector of nuisances, and by section 191 of that Act(c) it is enacted that a person shall not be appointed medical officer of health under that Act unless he is a legally qualified medical practitioner; and that we shall have the same powers as we have in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary and tenure of office of any officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament, and that we might by Order prescribe the duties of other medical officers of health appointed under the said Public Health Act, 1875 ;

And whereas by General Orders dated respectively the 8th and 10th days of March, 1880,(d) addressed to the several urban sanitary authorities, for the time being in England and Wales, we made certain regulations with respect to every medical officer of health or inspector of nuisances appointed or re-appointed by an urban sanitary authority after the date mentioned in such Orders, any portion of whose salary should be paid out of moneys voted by Parliament ;

And whereas by another General Order dated the 9th day of March, 1880,(d) addressed to the said authorities, we made certain regulations with respect to every medical officer of health appointed or re-appointed after the date mentioned in such Order, no portion of whose salary should be paid out of moneys voted by Parliament ;

And whereas by sub-section (2.) of section 24 of the Local Government Act, 1888,(e) with regard to certain of the payments to be made by the council of each county out of the county fund and charged to the Exchequer Contribution Account, it is enacted as follows :—

“(c.) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by Order under the Public Health Act, 1875, or any Act repealed by that Act ; but if the Local Government Board certify to the

(a) This Order applies only to medical officers of health and inspectors of nuisances appointed after the 25th March, 1891.

(b) *Ante*, p. 260.

(c) *Ante*, p. 263.

(d) These Orders are set out in “Glen’s Local Government Orders.”

(e) *Ante*, p. 504.

Appendix.

council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer, and not to the said local authority; ”

And whereas it is enacted by sub-section (3.) of section 24 of the said Local Government Act(a) as follows:—

“A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section; ”

And whereas urban sanitary authorities are local authorities within the meaning of the said sub-section (2.) of section 24, and medical officers of health and inspectors of nuisances are officers within the meaning of the said sub-section (3.):

Now, therefore, We, the Local Government Board, hereby order that the above-cited Orders dated, respectively, the eleventh day of November, one thousand eight hundred and seventy-two, and the eighth, ninth, and tenth days of March, one thousand eight hundred and eighty, shall not apply to any medical officer of health or inspector of nuisances appointed or re-appointed by any urban sanitary authority after the twenty-fifth day of March, one thousand eight hundred and ninety-one, and as regards any medical officer of health or inspector of nuisances so appointed or re-appointed before that date the said Orders dated, respectively, the eleventh day of November, one thousand eight hundred and seventy-two, and the eighth and tenth days of March, one thousand eight hundred and eighty, shall be construed to refer to medical officers of health or inspectors of nuisances in respect of whose salaries payment is intended to be made by a county council in pursuance of section 24 of the Local Government Act, 1888.

PART I.

And We hereby order as follows with respect to the appointment, tenure of office, salary, and duties of every medical officer of health or inspector of nuisances one-half of whose salary is intended to be payable to any urban sanitary authority by a county council in pursuance of the above-cited section 24 of the Local Government Act, 1888, or by the town council of a county borough in pursuance of the said section and sub-section (1.) of section 34 of the said Act, and who shall be appointed by any urban sanitary authority after the twenty-fifth day of March, one thousand eight hundred and ninety-one, or who, having been appointed by such sanitary authority under the provisions of either of the above-cited Orders dated, respectively, the eleventh day of November, one thousand eight hundred and seventy-two, or the eighth or tenth days of March, one thousand eight hundred and eighty, shall be re-appointed by them after the said twenty-fifth day of March one thousand eight hundred and ninety-one:—

Appointment.

ART. 1.—Before any appointment is made under this Order a statement shall be submitted to Us containing the particulars mentioned in the Form set forth in the Schedule to this Order, and such other particulars as may from time to time be required by Us.

Provided that where any such statement has been submitted to Us under the said Order dated the eleventh day of November, one thousand eight hundred and seventy-two, or under the said Orders dated the eighth or tenth days of March, one thousand eight hundred and eighty, or under this Order, no further statement under this Article shall be necessary, unless the sanitary authority, on any appointment, propose to alter the terms of the appointment, or unless We require a fresh statement to be submitted.

ART. 2.—When our approval has been given to the proposals contained in the

(a) *Ante*, p. 505.

statement so submitted, the sanitary authority shall proceed to the appointment of the officer accordingly. Provided that if the sanitary authority make the appointment before submitting such a statement as hereinbefore mentioned, the appointment shall be valid if approved by Us.

ART. 3.—An appointment shall not be made unless an advertisement specifying the district for which such appointment is to be made, together with the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper or newspapers circulating in the district of the sanitary authority at least seven days before the day so fixed.

ART. 4.—Every officer shall be appointed by a majority of the members present, and voting on the question, at a meeting of the sanitary authority consisting of more than three members, or by three members, if no more be present, but such appointment shall be subject to our approval. The sanitary authority shall specify in the resolution making the appointment, the term for which, with our approval, the appointment is made.

ART. 5.—Every appointment shall, within seven days after it is made, be reported to Us by the clerk to the sanitary authority.

ART. 6.—Upon the occurrence of a vacancy, the sanitary authority shall proceed to make a fresh appointment:

Provided that, if the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to our approval.

ART. 7.—If a vacancy be about to occur or notice given by an officer of an intended resignation to take effect on a future day, or on notice given by the sanitary authority in pursuance of Article 12 of this Order, or, in the case of an officer who holds his office for a specified term, by the term coming to an end, the sanitary authority may provide for the continuance of such officer, or appoint his successor, at any time subsequent to the giving of the notice, or within three calendar months next before the expiration of the term.

ART. 8.—If, in the case of an officer who has been appointed for a specified term, the sanitary authority desire to renew his appointment for a further term or otherwise in conformity with the provisions of this Order, and no fresh arrangement is proposed with respect to the terms of the appointment, it shall not be necessary that Articles 1, 2, and 3 of this Order should be complied with, but it shall be sufficient if the sanitary authority, either within three months before the expiration of the term for which he was last appointed, or after the expiration of such term, and, in either case, after notice given at one of their two ordinary meetings next preceding, pass a resolution renewing the appointment accordingly, and We sanction such resolution.

ART. 9.—If any officer be temporarily prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority may appoint a legally qualified person to act as his temporary substitute, and may pay to such person a reasonable compensation for his services; and it shall not be necessary in any such case that the foregoing Articles of this Order should be complied with, nor shall our approval be required to any such appointment, but no compensation shall be paid in any such case for a longer period than six weeks unless our consent be first obtained.

Tenure of Office.

ART. 10.—Every officer shall continue to hold office for such period as the sanitary authority may, subject to our approval, determine at the time of his appointment, or until he die, or resign, or be removed by such authority with our assent, or be removed by us, or be proved to be insane by evidence which we shall deem sufficient.

ART. 11.—The sanitary authority may, at their discretion, suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to us; and if we remove the suspension of such officer by the sanitary authority, he shall forthwith resume the performance of his duties.

ART. 12.—Where any change in the duties or salary of any officer may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with our consent but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

Appendix.

ART. 13.—A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

ART. 14.—The sanitary authority shall pay to every officer such salary as may be approved by us:

Provided always that the sanitary authority may, with our approval, pay to any officer a reasonable compensation on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district.

ART. 15.—The salary of every officer shall be payable up to the day on which he ceases to hold office and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of Article 13 of this Order; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives:

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under Article 10 of this Order, shall not be entitled to any salary from the date of such suspension.

ART. 16.—The salary assigned to every officer shall be payable quarterly, according to the usual Feast Days in the year, namely, Midsummer Day, Michaelmas Day, Christmas Day, and Lady Day; but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he would become entitled at the termination of the quarter.

ART. 17.—All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act, 1870."

Duties.

ART. 18.—The following shall be the duties of the medical officer of health:—

- (1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.
- (2.) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district, and ascertain to what extent the same have depended upon conditions capable of removal or mitigation.
- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.
- (4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority; and in cases requiring it, he shall certify, for the guidance of the sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.
- (5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such bye-laws and regulations as they may have power to make, and as to the adoption by the sanitary authority of the Infectious Disease (Prevention) Act, 1890, or of any section or sections of such Act.^(a)
- (6.) On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, he shall visit without delay the spot where the outbreak has occurred, and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and take such measures for the prevention of disease as he is legally authorised to take under any statute in force in the district or by any resolution of the sanitary authority.

(a) See this Act, *ante*, p. 548.

- (7.) Subject to the instructions of the sanitary authority, he shall direct or superintend the work of the inspector of nuisances in the way and to the extent that the sanitary authority shall approve, and on receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps as he is legally authorised to take under any statute in force in the district, or by any resolution of the sanitary authority, as the circumstances of the case may justify and require.
- (8.) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, and any other article to which the provisions of the Public Health Act, 1875, in this behalf apply, exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be dealt with by a justice according to the provisions of the statutes applicable to the case.
- (9.) He shall perform all the duties imposed upon him by any bye-laws and regulations of the sanitary authority, duly confirmed where confirmation is legally required, in respect of any matter affecting the public health, and touching which they are authorised to frame bye-laws and regulations.
- (10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.
- (11.) He shall attend at the office of the sanitary authority or at some other appointed place, at such stated times as they may direct.
- (12.) He shall from time to time report in writing to the sanitary authority his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been able to ascertain the cause.
- (13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports; and shall produce such book or books, whenever required, to the sanitary authority.
- (14.) He shall also make an annual report to the sanitary authority, up to the end of December in each year, comprising a summary of the action taken, or which he has advised the sanitary authority to take, during the year for preventing the spread of disease, and an account of the sanitary state of his district generally at the end of the year. The report shall also contain an account of the inquiries which he has made as to conditions injurious to health existing in the district, and of the proceedings in which he has taken part or advised under any statute, so far as such proceedings relate to those conditions; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary authority have power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. The report shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades, to dairies, cowsheds, and milkshops, and to factories and workshops. The report shall also contain tabular statements (on forms to be supplied by Us, or to the like effect) of the sickness and mortality within the district, classified according to diseases, ages, and localities:

Provided that, if the medical officer of health shall cease to hold office before the thirty-first day of December in any year, he shall make the like report for so much of the year as shall have expired when he ceases to hold office.

Appendix.

Appendix.

- (15.) He shall give immediate information to Us of any outbreak of dangerous epidemic disease within the district, and shall transmit to Us a copy of each annual report and of any special report. He shall make a special report to Us of the grounds of any advice which he may give to the sanitary authority with a view to their requiring the closure of any school or schools, in pursuance of the Code of Regulations approved by the Education Department, and for the time being in force.
- (16.) At the same time that he gives information to Us of an outbreak of infectious disease, or transmits to Us a copy of his annual report or of any special report, he shall give the like information or transmit a copy of such report to the county council of the county within which his district may be situated.
- (17.) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by Us, and the lawful orders and directions of the sanitary authority applicable to his office.
- (18.) Whenever We shall make regulations for all or any of the purposes specified in section 134 of the Public Health Act, 1875,^(a) and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations, so far as the same relate to or concern his office.

ART. 19.—The following shall be the duties of an inspector of nuisances :—

- (1.) He shall perform, either under the special directions of the sanitary authority, or (so far as authorised by the sanitary authority) under the directions of the medical officer of health, or, in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the Public Health Act, 1875, or by any other statute or statutes, or by the Orders of the Local Government Board, so far as the same apply to his office.
- (2.) He shall attend all meetings of the sanitary authority when so required.
- (3.) He shall by inspection of the district, both systematically at certain periods and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement.
- (4.) On receiving notice of the existence of any nuisance within the district, or of the breach of any bye-laws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of bye-laws or regulations.
- (5.) He shall report to the sanitary authority any noxious or offensive businesses, trades, or manufactories established within the district, and the breach or non-observance of any bye-laws or regulations made in respect of the same.
- (6.) He shall report to the sanitary authority any damage done to any works of water-supply, or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas, filth, or otherwise, of water used for domestic purposes.
- (7.) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the preparation or sale of butchers' meat, poultry, fish, fruit, vegetables, corn, bread, flour, milk, or any other article to which the provisions of the Public Health Act, 1875, in this behalf, shall apply, and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or other article as aforesaid, which may be therein; and in case any such article appear to him to be intended for the food of man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may be necessary in order to have the same dealt with by a justice: Provided that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.

(a) *Ante*, p. 151.

Appendix.

- (8.) He shall, when and as directed by the sanitary authority, procure and submit samples of food, drink, or drugs suspected to be adulterated, to be analysed by the analyst appointed under "The Sale of Food and Drugs Act, 1875," and upon receiving a certificate stating that the articles of food, drink, or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.
- (9.) He shall give immediate notice to the medical officer of health of the occurrence within the district of any contagious, infectious, or epidemic disease; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall forthwith inform the medical officer of health thereof.
- (10.) He shall, subject to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by an inspector of nuisances under the Public Health Act, 1875, or under any other statute or statutes, for preventing the spread of any contagious, infectious, or epidemic disease of a dangerous character.
- (11.) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Public Health Act, 1875, or under any other statute or statutes, and shall keep any other systematic records that the sanitary authority may require.
- (12.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.
- (13.) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within the district.
- (14.) He shall, if directed by the sanitary authority to do so, act as officer of the said authority as local authority under the Contagious Diseases (Animals) Act, 1886, and any orders or regulations made thereunder.
- (15.) In matters not specially provided for in this Order, he shall observe and execute all the lawful orders and directions of the sanitary authority, and the Orders of the Local Government Board which may be hereafter issued, applicable to his office.

PART II.

In regard to every medical officer of health no part of whose salary is intended to be payable to an urban sanitary authority by a county council or by the town council of a borough in pursuance of the Local Government Act, 1888, We do hereby Order:—

ART. 20.—The following shall be the duties of the medical officer of health in respect of the district for which he is appointed:—

- (1.) He shall, within seven days after his appointment, report the same in writing to Us.
- (2.) He shall perform all the duties prescribed by Article 18 of this Order for a medical officer of health in respect of whose salary a payment is intended to be made by a county council as aforesaid.

Appendix.

SCHEDULE.

PUBLIC HEALTH ACT, 1875.

Proposal for Appointment of Medical Officer of Health,
or

Proposal for Appointment of Inspector of Nuisances.

(Under the provisions of the General Order of the Local Government Board dated the 23rd of March, 1891.)

URBAN SANITARY DISTRICT.

1. State the name of the sanitary authority by whom the appointment is to be made.
2. The names of the parishes, either wholly or in part, comprised in the district for which the officer is to be appointed.
The words "part of" should be affixed in those cases where only a part of a parish is included.
3. The area of the district (in acres).
If the exact area is not known, it should be estimated as nearly as practicable, and the word "estimated" should be added.
4. The population of the district according to the last census.
If the exact population is not known, it should be estimated as nearly as practicable, and the word "estimated" should be added.
5. The term for which it is proposed that the appointment should be made.
6. The amount of the salary proposed.
7. Whether it is intended that the officer should give his whole time to the performance of the duties of his office.

(Signature) ——— *Clerk to the Urban Sanitary Authority.*

Date

Given under the Seal of Office of the Local Government Board, this twenty-third day of March, in the year one thousand eight hundred and ninety-one.

(L.S.)

CHAS. T. RITCHIE, *President.*

S. B. PROVIS, *Assistant Secretary.*

Order made under the Public Health Act, 1875, s. 191, *ante*, p. 263 :—

GENERAL ORDER (RURAL SANITARY AUTHORITIES).

(23rd March, 1891.)

REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH AND INSPECTORS OF NUISANCES.^(a)

To the several Rural Sanitary Authorities, for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by General Orders dated the 11th day of November, 1872, addressed to the guardians of the poor of the several unions, parishes, and places in England and Wales in which such guardians act as a rural sanitary authority under the Public Health Act, 1872, We, the Local Government Board, acting under the authority conferred upon Us by section 10 of that Act, prescribed regulations with respect to the qualification, appointment, duties, salary, and tenure of office of medical officers of health appointed by rural sanitary authorities, and with respect to the appointment, duties, salary, and tenure of office of inspectors of nuisances appointed by such authorities, in all cases where any portion of the salary of any such officer was paid out of moneys voted by Parliament;

And whereas it is required by section 190 of the Public Health Act, 1875,^(b) that every rural sanitary authority shall from time to time appoint a medical officer or officers of health, and an inspector or inspectors of nuisances, and by section 191 of that Act,^(c) it is enacted that a person shall not be appointed medical officer of health under that Act unless he is a legally qualified medical practitioner; and that We shall have the same powers as We have in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of any officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament, and that We may by order prescribe the duties of other medical officers of health appointed under the said Public Health Act, 1875;

And whereas by General Orders dated respectively the 11th and 13th days of March, 1880,^(d) addressed to the several rural sanitary authorities, for the time being, in England and Wales. We made certain regulations with respect to every medical officer of health or inspector of nuisances appointed or re-appointed by a rural sanitary authority after the date mentioned in such orders, any portion of whose salary should be paid out of moneys voted by Parliament;

And whereas by another General Order dated the 12th day of March, 1880,^(d) addressed to the said authorities, We make certain regulations with respect to every medical officer of health appointed or re-appointed after the date mentioned in such Order, no portion of whose salary should be paid out of moneys voted by Parliament;

And whereas by sub-section (2) of section 24 of the Local Government Act, 1888,^(e) with regard to certain of the payments to be made by the council of each county out of the county fund and charged to the Exchequer Contribution Account, it is enacted as follows:—

“(c.) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the Public Health Act, 1875, or any Act repealed by that Act; but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the

(a) This Order applies only to medical officers of health and inspectors of nuisances appointed after the 25th March, 1891.

(b) *Ante*, p. 263.

(c) *Ante*, p. 263.

(d) These Orders are set out in “Glen’s Local Government Orders.”

(e) See this section, *ante*, p. 504.

Appendix.

regulations respecting the duties of such officer made by order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer, and not to the said local authority”;

And whereas it is enacted by sub-section (3) of section 24 of the said Local Government Act^(a) as follows:—

“A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section”;

And whereas rural sanitary authorities are local authorities within the meaning of the said sub-section (2) of section 24, and medical officers of health and inspectors of nuisances are officers within the meaning of the said sub-section (3):

Now therefore, We, the Local Government Board, hereby order that the above-cited Orders dated, respectively, the eleventh day of November, one thousand eight hundred and seventy-two, and the eleventh, twelfth, and thirteenth days of March, one thousand eight hundred and eighty, shall not apply to any medical officer of health or inspector of nuisances appointed or re-appointed by any rural sanitary authority after the twenty-fifth day of March, one thousand eight hundred and ninety-one; and as regards any medical officer of health or inspector of nuisances so appointed or re-appointed before that date the said Orders dated, respectively, the eleventh day of November, one thousand eight hundred and seventy-two, and the eleventh and thirteenth days of March, one thousand eight hundred and eighty, shall be construed to refer to medical officers of health or inspectors of nuisances in respect of whose salaries payment is intended to be made by a county council or county councils in pursuance of section 24 of the Local Government Act, 1888.

PART I.

And We hereby order as follows with respect to the appointment, tenure of office, salary, and duties of every medical officer of health or inspector of nuisances, one-half of whose salary is intended to be payable to any rural sanitary authority by a county council or county councils in pursuance of the above-cited section 24 of the Local Government Act, 1888, and who shall be appointed by any rural sanitary authority after the twenty-fifth day of March, one thousand eight hundred and ninety-one, or who, having been appointed by such sanitary authority under the provisions of either of the above-cited Orders dated, respectively, the eleventh day of November, one thousand eight hundred and seventy-two, or the eleventh or thirteenth days of March, one thousand eight hundred and eighty, shall be re-appointed by them after the said twenty-fifth day of March, one thousand eight hundred and ninety-one:—

Appointment.

ART. 1.—Before any appointment is made under this Order a statement shall be submitted to Us containing the particulars mentioned in the form set forth in the schedule to this Order,^(b) and such other particulars as may from time to time be required by Us.

Provided that where any such statement has been submitted to Us under the said Order dated the eleventh day of November, one thousand eight hundred and seventy-two, or under the said Orders dated the eleventh or thirteenth days of March, one thousand eight hundred and eighty, or under this Order, no further statement under this article shall be necessary unless the sanitary authority, on any appointment, propose to alter the district or the salary, or unless We require a fresh statement to be submitted.

(a) See this section, *ante*, p. 505.

(b) This Schedule is omitted from the present edition; the form thereby prescribed is identical with that prescribed by the General Order as to Urban Sanitary Authorities (*ante*, p. 1504), with the substitution of rural sanitary district for urban sanitary district, and rural sanitary authority for urban sanitary authority.

Appendix.

ART. 2.—When Our approval has been given to the proposals contained in the statement so submitted, the sanitary authority shall proceed to the appointment of the officer accordingly. Provided that if the sanitary authority make the appointment before submitting such a statement as hereinbefore mentioned, the appointment shall be valid if approved by Us.

ART. 3.—An appointment shall not be made unless notice has been given in one or other of the following modes; that is to say, either by notice given at one of the two ordinary meetings next preceding the meeting at which the appointment is to be made by the sanitary authority, such notice being duly entered on the minutes, or by an advertisement specifying the district or districts for which such appointment is to be made, together with the amount of salary proposed to be assigned, and the day fixed for such appointment, which advertisement shall have appeared in some public newspaper or newspapers circulating in the district of the sanitary authority at least seven days before the day so fixed.

ART. 4.—Every officer shall be appointed by a majority of the members present at a meeting of the sanitary authority consisting of more than three members, or by three members if no more be present, but such appointment shall be subject to Our approval. The sanitary authority shall specify in the resolution making the appointment the term for which, with Our approval, the appointment is made.

ART. 5.—Every appointment shall, within seven days after it is made, be reported to Us by the clerk to the sanitary authority.

ART. 6.—Upon the occurrence of a vacancy, the sanitary authority shall proceed to make a fresh appointment:

Provided that, if the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to Our approval.

ART. 7.—If a vacancy be about to occur on notice given by an officer of an intended resignation to take effect on a future day, or on notice given by the sanitary authority in pursuance of Article 12 of this Order, or, in the case of an officer who holds his office for a specified term, by the term coming to an end, the sanitary authority may provide for the continuance of such officer, or appoint his successor, at any time subsequent to the giving of the notice, or within three calendar months next before the expiration of the term.

ART. 8.—If in the case of an officer who has been appointed for a specified term, the sanitary authority desire to renew his appointment for a further term or otherwise in conformity with the provisions of this Order, and no fresh arrangement is proposed with respect to the district or salary, it shall not be necessary that Articles 1, 2, and 3 of this Order should be complied with, but it shall be sufficient if the sanitary authority, either within three months before the expiration of the term for which he was last appointed, or after the expiration of such term, and, in either case, after notice given at one of their two ordinary meetings next preceding, pass a resolution renewing the appointment accordingly, and We sanction such resolution.

ART. 9.—If any officer be temporarily prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority may appoint a legally qualified person to act as his temporary substitute, and may pay to such person a reasonable compensation for his services; and it shall not be necessary in any such case that the foregoing Articles of this Order should be complied with, nor shall Our approval be required to any such appointment, but no compensation shall be paid in any such case for a longer period than six weeks unless Our consent be first obtained.

Tenure of Office.

ART. 10.—Every officer shall continue to hold office for such period as the sanitary authority may, subject to Our approval, determine at the time of his appointment, or until he die, or resign, or be removed by such authority with Our assent, or be removed by us, or be proved to be insane by evidence which We shall deem sufficient.

ART. 11.—The sanitary authority may, at their discretion, suspend any officer from the discharge of his duties, and shall in case of every such suspension, forthwith report the same, together with the cause thereof, to Us; and if We remove the suspension of such officer by the sanitary authority, he shall forthwith resume the performance of his duties.

Appendix.

ART. 12.—Where any change in the extent of the district of any officer, or in his duties or salary, may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with Our consent but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

ART. 13.—A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

ART. 14.—The sanitary authority shall pay to every officer such salary as may be approved by Us.

Provided always that the sanitary authority may, with Our approval, pay to any officer a reasonable compensation on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district or districts for which he is appointed.

ART. 15.—The salary of every officer shall be payable up to the day on which he ceases to hold office and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of Article 13 of this Order; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under Article 10 of this Order, shall not be entitled to any salary from the date of such suspension.

ART. 16.—The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day; but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he would become entitled at the termination of the quarter.

ART. 17.—All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act, 1870."

Duties.

ART. 18.—The following shall be the duties of the medical officer of health in respect of the district for which he is appointed; or if he shall be appointed for more than one district, then in respect of each of such districts:—

- (1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.
- (2.) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.
- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.
- (4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority; and in cases requiring it, he shall certify, for the guidance of the sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.
- (5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such bye-laws and regulations as they may have power to make, and as to the adoption by the sanitary authority of the Infectious Disease (Prevention) Act, 1890, or of any section or sections of such Act.
- (6.) On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, he shall visit without delay the spot where the outbreak has occurred, and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the

Appendix.
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persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and take such measures for the prevention of disease as he is legally authorised to take under any statute in force in the district, or by any resolution of the sanitary authority.

- (7.) Subject to the instructions of the sanitary authority, he shall direct or superintend the work of the inspector of nuisances in the way and to the extent that the sanitary authority shall approve, and on receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps as he is legally authorised to take under any statute in force in the district, or by any resolution of the sanitary authority, as the circumstances of the case may justify and require.
- (8.) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, and any other article to which the provisions of the Public Health Act, 1875, in this behalf shall apply, exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be dealt with by a justice according to the provisions of the statutes applicable to the case.
- (9.) He shall perform all the duties imposed upon him by any bye-laws and regulations of the sanitary authority, duly confirmed where confirmation is legally required, in respect of any matter affecting the public health, and touching which they are authorised to frame bye-laws and regulations.
- (10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.
- (11.) He shall attend at the office of the sanitary authority or at some other appointed place, at such stated times as they may direct.
- (12.) He shall from time to time report in writing to the sanitary authority his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district so far as he has been enabled to ascertain the same.
- (13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports; and shall produce such book or books, whenever required to the sanitary authority.
- (14.) He shall also make an annual report to the sanitary authority, up to the end of December in each year, comprising a summary of the action taken, or which he has advised the sanitary authority to take, during the year for preventing the spread of disease, and an account of the sanitary state of his district generally at the end of the year. The report shall also contain an account of the inquiries which he has made as to conditions injurious to health existing in the district, and of the proceedings in which he has taken part or advised under any statute, so far as such proceedings relate to those conditions; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary authority have power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. The report shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades, to dairies, cowsheds, and milkshops, and to factories and workshops. The report shall also contain tabular statements (on forms to be supplied by

Appendix.

Us, or to the like effect) of the sickness and mortality within the district, classified according to diseases, ages, and localities.

Provided that, if the medical officer of health shall cease to hold office before the thirty-first day of December in any year, he shall make the like report for so much of the year as shall have expired when he ceases to hold office.

- (15.) He shall give immediate information to Us of any outbreak of dangerous epidemic disease within the district, and shall transmit to Us a copy of each annual report and of any special report. He shall make a special report to Us of the grounds of any advice which he may give to the sanitary authority with a view to their requiring the closure of any school or schools, in pursuance of the Code of Regulations approved by the Education Department, and for the time being in force.
- (16.) At the same time that he gives information to Us of an outbreak of infectious disease or transmits to Us a copy of his annual report or of any special report, he shall give the like information or transmit a copy of such report to the county council or county councils of the county or counties within which his district may be situated.
- (17.) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by Us, and the lawful orders and directions of the sanitary authority applicable to his office.
- (18.) Whenever We shall make regulations for all or any of the purposes specified in section 134 of the Public Health Act, 1875, (a) and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations, so far as the same relate to or concern his office.

ART. 19.—The following shall be the duties of an inspector of nuisances in respect of the district for which he is appointed:—

- (1.) He shall perform, either under the special directions of the sanitary authority, or (so far as authorised by the sanitary authority) under the directions of the medical officer of health, or in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the Public Health Act, 1875, or by any other statute or statutes, or by the Orders of the Local Government Board, so far as the same apply to his office.
- (2.) He shall attend all meetings of the sanitary authority when so required.
- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement.
- (4.) On receiving notice of the existence of any nuisance within the district, or of the breach of any bye-laws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of bye-laws or regulations.
- (5.) He shall report to the sanitary authority any noxious or offensive businesses, trades, or manufactories established within the district, and the breach or non-observance of any bye-laws or regulations made in respect of the same.
- (6.) He shall report to the sanitary authority any damage done to any works of water supply, or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas, filth, or otherwise, of water used for domestic purposes.
- (7.) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the preparation or sale of butchers' meat, poultry, fish, fruit, vegetables, corn, bread, flower, milk, or any other article to which the provisions of the Public Health Act, 1875, in this behalf apply, and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or other article as aforesaid which may be therein; and in case any such article appear to him to be intended for the food of man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may

be necessary in order to have the same dealt with by a justice: Provided that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon. Appendix.

- (8.) He shall, when and as directed by the sanitary authority, procure and submit samples of food, drink, or drugs, suspected to be adulterated, to be analysed by the analyst appointed under "The Sale of Food and Drugs Act, 1875," and upon receiving a certificate stating that the articles of food, drink, or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.
- (9.) He shall give immediate notice to the medical officer of health of the occurrence within the district of any contagious, infectious, or epidemic disease; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall forthwith inform the medical officer of health thereof.
- (10.) He shall, subject to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by an inspector of nuisances under the Public Health Act, 1875, or under any other statute or statutes, for preventing the spread of any contagious, infectious, or epidemic disease of a dangerous character.
- (11.) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Public Health Act, 1875, or under any other statute or statutes, and shall keep any other systematic records that the sanitary authority may require.
- (12.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.
- (13.) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within the district.
- (14.) He shall, if directed by the sanitary authority to do so, act as officer of the said authority as local authority under the Contagious Diseases (Animals) Act, 1886, and any orders or regulations made thereunder.
- (15.) In matters not specifically provided for in this Order, he shall observe and execute all the lawful orders and directions of the sanitary authority, and the Orders of the Local Government Board which may be hereafter issued, applicable to his office.

PART II.

In regard to every medical officer of health no part of whose salary is intended to be payable to a rural sanitary authority by a county council or county councils in pursuance of the above-cited section 24 of the Local Government Act, 1888, We do hereby order:—

ART. 20.—The following shall be the duties of the medical officer of health in respect of the district for which he is appointed:—

- (1.) He shall, within seven days after his appointment, report the same in writing to Us.
- (2.) He shall perform all the duties prescribed by Article 18 of this Order for a medical officer of health in respect of whose salary a payment is intended to be made by a county council or county councils as aforesaid.(b)

[And see "CHOLERA." See also "DISEASES AND HOSPITALS," and note (g), *ante*, p. 783, "ORDER IN COUNCIL UNDER THE QUARANTINE ACT, 1825."]

(b) The Schedule to this Order is omitted. See *ante*, p. 1506, note (b).

Appendix.

PROVISIONAL ORDERS.

GAS AND WATER WORKS FACILITIES ACT, 1870, AND GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT ACT, 1873—GENERAL ORDER.

(7th September, 1891.)

TO THE URBAN SANITARY AUTHORITIES for the Urban Sanitary Districts in England and Wales ;—

And to all others whom it may concern.

WHEREAS by section 5 of “The Gas and Water Works Facilities Act, 1870,”^(a) it is enacted that the undertakers intending to make application for a provisional order in pursuance of that Act, shall (amongst other things), on or before the 30th day of the month of November next before their application, deposit the documents described in Part II. of Schedule B. to that Act, according to the regulations therein contained ;

And whereas by Part II. of Schedule B. aforesaid^(b) it is provided that the undertakers shall deposit (amongst other things) a proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf ;

And whereas by section 6 of the said Act^(c) it is further enacted that the Board of Trade shall consider the application for any such Provisional Order as aforesaid, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application ;

And whereas by section 14 of “The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873,”^(d) it is enacted as follows :—

“The Board of Trade may from time to time make, and when made, may rescind, annul, or add to, rules with respect to the following matters :

“The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act ; and

“As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

“Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

“Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.”

And whereas by section 161 of the Public Health Act, 1875,^(e) it is enacted that—Where an urban sanitary authority may under that Act themselves undertake to supply gas for the whole or any part of their district, a Provisional Order authorising a gas undertaking may be obtained by such authority, under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same ; and in the construction of the said Act the term “the undertakers” shall be deemed to include any such urban sanitary authority : Provided that, for the purposes of that Act, the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

And whereas by an Order dated the 26th day of October, 1877, We, the Local Government Board, prescribed regulations with regard to the proceedings to be taken by urban sanitary authorities in connection with applications made by them

^(a) *Ante*, p. 943.^(b) *Ante*, p. 947.^(d) *Ante*, p. 1006.^(c) *Ante*, p. 944.^(e) *Ante*, p. 224.

for Provisional Orders as aforesaid, and by a further Order dated the 1st day of November, 1877, We appointed the day on or before which objections to any such applications should be lodged with Us; **Appendix.**

And whereas it is expedient that further provision in the matter should be made as hereinafter mentioned :

Now therefore, in pursuance of the above-cited provisions, and by virtue of the several other authorities enabling Us in this behalf, We hereby rescind the said Orders dated respectively the twenty-sixth day of October, one thousand eight hundred and seventy-seven, and the first day of November, one thousand eight hundred and seventy-seven, and in lieu thereof We do hereby make the following regulations and rules:—

1. The notice in writing and the notice by advertisement required to be given by sub-sections 1 and 2 of section 5 of the Gas and Water Works Facilities Act, 1870, must state that every company, corporation, or person referred to therein, or any other person desirous of bringing before the Local Government Board any objection respecting the application of the urban sanitary authority for a provisional order, may do so by letter addressed to the secretary of the said Board, to be lodged with the said Board on or before the fifteenth day of January next ensuing the making of such application, and that a copy of such objection must, at the same time, be sent to the clerk to such urban sanitary authority.

2. The map required to be deposited on or before the thirtieth day of November, by Schedule B., Part II., of the said Act, must be on a scale of not less than six inches to the mile, and must show distinctly the situation of the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas, in relation to the adjoining lands and premises, and to the urban sanitary district generally. The plan and section of any proposed new works required to be deposited on or before the day aforesaid by the said part of the said Schedule must be on a scale of not less than one inch to 50 feet, and must, as far as practicable, show the general arrangement, elevation, and character of the proposed works.

In any case where any part of the works would be situate on lands where the ordinary spring tide flows, the site of such lands must be coloured blue on the map and plan. A copy of such map and plan, coloured in like manner, and marked "tidal waters," shall be deposited at the Board of Trade on or before the date last aforesaid.

3. Where the application is for an extension of gas works, a map or plan of the existing gas works on a scale of not less than six inches to the mile must accompany the memorial to be deposited with the Local Government Board.

4.—(i.) The draft of the Provisional Order required to be deposited with the Local Government Board on or before the twenty-third day of December must be on foolscap paper, and printed or lithographed on one side only.

(ii.) The name of the urban sanitary authority, together with the name and address of the clerk to such authority, must be shown on the back of the last page of every such draft Provisional Order, which must contain a notice at the end of it, stating that any objections are to be sent to the Local Government Board in the manner aforesaid.

(iii.) Three copies of the draft Order must be deposited with the Local Government Board.

5. The urban sanitary authority must prove compliance with the provisions of—

(i.) The Gas and Water Works Facilities Act, 1870, section 5, sub-section (1);

(ii.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part I., paragraphs (3) and (4);

(iii.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part II., paragraph (2);

(iv.) The Gas and Water Works Facilities Act, 1870, Schedule B., Part III., paragraph (2);

(v.) This Order;

by an affidavit or statutory declaration to be made by the clerk or some other officer of the urban sanitary authority, and to be deposited with the Local Government Board on or before the first day of January next ensuing the making of the application.

Appendix.

Copies of the notices, together with copies of the newspapers and London Gazette containing the notice by advertisement, and the receipt of the clerk of the peace (if any) for the documents deposited with him, must be annexed to the affidavit or declaration as exhibits.

Such affidavit or declaration must also state that there is not any company or person authorised by or in pursuance of any Act of Parliament, or any Order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such urban sanitary authority, or within the part of the district which the urban sanitary authority propose to supply, as the case may be.

6. On or before the first day of January there must be deposited with the Local Government Board an affidavit, showing that the requirements of the Standing Orders of both Houses of Parliament have been complied with, as regards the deposit with the Clerk of the Parliaments and at the Private Bill Office of duplicates of every map, plan, section, and book of reference deposited with the Local Government Board, and as regards the deposit with the Board of Trade of the copy of the map and plan before referred to. The affidavit must be sworn by the clerk or some other officer of the urban sanitary authority and by the person by whom the deposits were made.

7. Any objection to an application by an urban sanitary authority for a Provisional Order as aforesaid must be lodged with the Local Government Board on or before the fifteenth day of January next ensuing the making of the application by the urban sanitary authority.

8. Every memorial, objection, and other such document deposited or lodged with the Local Government Board must be on foolscap paper.

9. When an objection is lodged with the Local Government Board, the objector or his agent must state that he has at the same time forwarded a copy of such objection to the urban sanitary authority.

10. When a Provisional Order has been issued by the Local Government Board the urban sanitary authority must, within fourteen days after the day on which the same shall have been sent to them by the Local Government Board, transmit to the said Board an affidavit or statutory declaration, made by the clerk or some other officer of the urban sanitary authority, proving that the Provisional Order was published on or before the twenty-fifth day of April, in conformity with paragraph 3 of Schedule B., Part IV., of the Gas and Water Works Facilities Act, 1870, and that paragraphs 1 and 2 of the said part of that schedule have been complied with.

The receipt of the clerk of the peace (if any) for the copies of the Provisional Order deposited with him, and copies of the Provisional Order and of the newspaper containing the advertisement of such Order, must be annexed to the affidavit or declaration as exhibits.

11. Every statutory declaration and affidavit under these Regulations and Rules must be made out or sworn before a justice of the peace or a commissioner for oaths, and must be duly stamped.

Given under the Seal of Office of the Local Government Board, this seventh day of September, in the year one thousand eight hundred and ninety-one.

(L.S.) HENRY MATTHEWS,

One of the Ex-officio Members of the Local Government Board.

S. B. PROVIS, *Assistant Secretary.*

Date of publication in the London Gazette, 8th September, 1891.

PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT, 1875, THE
HOUSING OF THE WORKING CLASSES ACT, 1890, AND THE GAS
AND WATER WORKS FACILITIES ACTS—CIRCULAR TO URBAN
DISTRICT COUNCILS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
16th September, 1895.

SIR,—I am directed by the Local Government Board to state that they deem it desirable to follow the practice of previous years, and to fix a day before which all applications for Provisional Orders under the Public Health Act, 1875, must be made, if it is wished that the Order should be confirmed during the session of 1896, and they also consider that the same date should apply to petitions for Provisional Orders under Part I. of the Housing of the Working Classes Act, 1890. The necessity for this course is the more apparent as, having regard to the experience of recent years, it will probably be impossible for Bills to confirm Provisional Orders, which are not introduced into the House of Commons before the Whitsuntide Recess, to reach the House of Lords by the date necessary to insure compliance with the Lords' Sessional Order relating to the second reading of such Bills.

The Board have accordingly determined that all such applications must be received by them not later than the 30th of November next, subject to these exceptions, viz.: (1) that where the application is for an Order to put in force the compulsory powers of the Lands Clauses Acts, or to confirm an improvement scheme under Part I. of the Housing of the Working Classes Act, 1890, and the advertisements were not published until November, the application must be received not later than the 21st of December next, and (2) that any application for a Provisional Order for the constitution of a joint board under section 279 of the Public Health Act, 1875, should be submitted to the Board not later than the last-mentioned date.

The dates above-mentioned are fixed as the latest at which applications for Provisional Orders can be received, but it is obviously desirable that, wherever practicable, the applications should be made earlier; and the Board therefore trust that every urban district council, who may propose to apply for a Provisional Order, will make their application as soon as they are in a position to furnish the requisite particulars.

It is particularly important that applications for Provisional Orders to alter Local Acts should be made at the earliest possible date. These applications often require much consideration, and the Board are able to give more attention to them in the autumn than is possible during the earlier part of the following year. All applications for Provisional Orders of this kind should therefore be sent in before the 15th of October, 1895.

The Board have carefully revised the Instructions which they have been accustomed to issue for the guidance of local authorities desirous of making applications for Provisional Orders under the Public Health Act, 1875, and a copy of the revised Instructions is enclosed, for the information of the urban district council.

The Instructions of the Board with regard to applications for Provisional Orders under Part I. of the Housing of the Working Classes Act, 1890, have also been revised, and a copy is enclosed.

I am further to state that, where an urban district council propose to apply for a Provisional Order for gas purposes under the Gas and Water Works Facilities Acts, the special regulations which have been issued by the Board under those Acts must be complied with. Copies of these regulations can be obtained on application to the Board. A form of Order constituting a joint board will also be supplied on application to the Board.

I am to add that in connection with applications for the sanction by the Board of the costs incurred by an urban district council in promoting or opposing a Provisional Order, under section 298 of the Public Health Act, 1875, it is the practice of the Board to require that such costs shall be taxed by the taxing officer of one of the Houses of Parliament. It will not, therefore, be necessary to submit such costs for taxation by the clerk of the peace.

I am, Sir, your obedient Servant,

HUGH OWEN, *Secretary.*

The Clerk to the Urban District Council.

Appendix.

PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT, 1875, THE HOUSING OF THE WORKING CLASSES ACT, 1890, THE GAS AND WATER WORKS FACILITIES ACTS, AND THE LOCAL GOVERNMENT ACT, 1888.—CIRCULAR TO TOWN COUNCILS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.

16th September, 1895.

SIR,—I am directed by the Local Government Board to state that they deem it desirable to follow the practice of previous years, and to fix a day before which all applications for Provisional Orders under the Public Health Act, 1875, must be made, if it is wished that the Order should be confirmed during the session of 1896, and they also consider that the same date should apply to petitions for Provisional Orders under Part I. of the Housing of the Working Classes Act, 1890. The necessity for this course is the more apparent as, having regard to the experience of recent years, it will probably be impossible for bills to confirm Provisional Orders, which are not introduced into the House of Commons before the Whitsuntide recess, to reach the House of Lords by the date necessary to ensure compliance with the Lords' Sessional Order relating to the second reading of such Bills.

The Board have accordingly determined that all such applications must be received by them not later than the 30th of November next, subject to these exceptions, viz.: (1) that where the application is for an Order to put in force the compulsory powers of the Lands Clauses Acts, or to confirm an improvement scheme under Part I. of the Housing of the Working Classes Act, 1890, and the advertisements were not published until November, the application must be received not later than the 21st of December next, and (2) that any application for a Provisional Order for the constitution of a joint board under section 279 of the Public Health Act, 1875, should be submitted to the Board not later than the last-mentioned date.

The dates above-mentioned are fixed as the latest at which applications for Provisional Orders can be received, but it is obviously desirable that, wherever practicable, the applications should be made earlier; and the Board therefore trust that every town council, who may propose to apply for a Provisional Order, will make their application as soon as they are in a position to furnish the requisite particulars.

It is particularly important that applications for Provisional Orders to alter local Acts should be made at the earliest possible date. These applications often require much consideration, and the Board are able to give more attention to them in the autumn than is possible during the earlier part of the following year. All applications for Provisional Orders of this kind should therefore be sent in before the 15th of October, 1895.

The Board have carefully revised the instructions which they have been accustomed to issue for the guidance of local authorities desirous of making applications for Provisional Orders under the Public Health Act, 1875, and a copy of the revised instructions is enclosed, for the information of the town council.

The instructions of the Board with regard to applications for Provisional Orders under Part I. of the Housing of the Working Classes Act, 1890, have also been revised, and a copy is enclosed.

I am further to state that, where a town council propose to apply for a Provisional Order for gas purposes under the Gas and Water Works Facilities Acts, the special regulations which have been issued by the Board under those Acts must be complied with. Copies of these regulations can be obtained on application to the Board.

I am likewise to enclose a copy of the instructions which the Board have caused to be prepared for the guidance of town councils who may wish to make representations under section 54 (1) (a) of the Local Government Act, 1888, in favour of alterations of the boundaries of their boroughs. It is important that, in any case in which it may be desired to obtain a Provisional Order under the last-mentioned enactment in time for confirmation during the session of 1896, the representation should be made to the Board at a very early date.

I am to add that in connection with applications for the sanction by the Board of the costs incurred by a town council in promoting or opposing a Provisional Order, under section 298 of the Public Health Act, 1875 (which section is made

applicable to Provisional Orders under the Local Government Act, 1888, by section 87 (2) of that Act), it is the practice of the Board to require that such costs shall be taxed by the taxing officer of one of the Houses of Parliament. It will not, therefore, be necessary to submit such costs for taxation by the clerk of the peace.

Appendix.
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I am, Sir, your obedient Servant,
HUGH OWEN, *Secretary*.

The Town Clerk,

PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT, 1875—
CIRCULAR TO RURAL DISTRICT COUNCILS.

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
16th September, 1895.

SIR,—I am directed by the Local Government Board to state that they deem it desirable to follow the practice of previous years, and to fix a day before which all applications for Provisional Orders under the Public Health Act, 1875, must be made, if it is wished that the Order should be confirmed during the session of 1896. The necessity for this course is the more apparent as, having regard to the experience of recent years, it will probably be impossible for Bills to confirm Provisional Orders, which are not introduced into the House of Commons before the Whitsuntide recess, to reach the House of Lords by the date necessary to ensure compliance with the Lords' Sessional Order relating to the second reading of such Bills.

The Board have accordingly determined that all such applications must be received by them not later than the 30th of November next, subject to these exceptions, viz.: (1) that where the application is for an order to put in force the compulsory powers of the Lands Clauses Acts, and the advertisements were not published until November, the application must be received not later than the 21st of December next, and (2) that any application for a Provisional Order for the constitution of a joint Board under section 279 of the Public Health Act, 1875, should be submitted to the Board not later than the last-mentioned date. A form of Order constituting a joint Board will be supplied on application to the Board.

The dates above-mentioned are only fixed as the latest at which applications for Provisional Orders can be received, but it is obviously desirable that, wherever practicable, the applications should be made earlier; and the Board therefore trust that every rural district council, who may propose to apply for a Provisional Order, will make their application as soon as they are in a position to furnish the requisite particulars.

The Board have carefully revised the instructions which they have been accustomed to issue for the guidance of local authorities desirous of making applications for Provisional Orders under the Public Health Act, 1875, and a copy of the revised instructions is enclosed, for the information of the rural district council.

I am to add that in connection with applications for the sanction by the Board of the costs incurred by a rural district council in promoting or opposing a Provisional Order, under section 298 of the Public Health Act, 1875, it is the practice of the Board to require that such costs shall be taxed by the taxing officer of one of the Houses of Parliament. It will not, therefore, be necessary to submit such costs for taxation by the clerk of the peace.

I am, Sir, your obedient Servant,
HUGH OWEN, *Secretary*.

The Clerk to the Rural District Council,

Appendix.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. C. 55).

(16th September, 1895.)

Applications for Provisional Orders to repeal, alter, or amend Local Acts.

1. The application should be made by a resolution of the local authority, asking the Board in general terms to repeal, alter, or amend the local Act, wholly or partially, as the case may require, and a copy of the resolution, certified by the clerk, should be forwarded to the Board.

2. The application must be made not later than the 30th November next, and it is very desirable that it should be sent in before the 15th October next.

3. The application should be accompanied by a Queen's printer's copy of the local Act, and by a statement showing the particular sections which it is proposed should be repealed, altered or amended, the precise alterations desired, and any section which will require consequential alteration; and in the event of the local Act having been previously altered by Provisional Order or local Act, a reference to such Order or Act should be given. The statement should also show the grounds upon which the application is made.

If the application relates to any land or area which is described by reference to a map or plan, the map or plan must be supplied, and in that case it will also be necessary to comply with Standing Order 39 of each House of Parliament. An extract from this Standing Order is appended on page 5.(a)

Applications for Provisional Orders to put in force the compulsory powers of the Land Clauses Acts.

4.—(a.) The application must be made by a petition under the seal of the local authority, containing the particulars required by section 176 (3) of the Public Health Act, 1875. The lands proposed to be purchased should be specified in a schedule to the petition, *which schedule should be an exact copy of so much of the book of reference mentioned in Instruction 7 as relates to those lands.*

(b.) Where it is only intended to carry sewers into, through, or under lands, such lands should not be included in the petition, as the local authority are empowered by section 16 of the Public Health Act to carry sewers into, through, or under lands without purchasing the lands.

5. The petition must be presented not later than the 31st October, if the advertisements of the proposal were published in September, not later than the 30th November, if they were published in October, and not later than the 21st December if they were published in November.

6.—(a.) Attention is drawn to the provision in section 176 of the Public Health Act, 1875, which empowers local authorities to issue in the months of September and October, or of October and November, the advertisements and notices which are required before they can apply for a Provisional Order to enable them to obtain lands by compulsory purchase. It is very desirable that the local authority should avail themselves of this power, so that the petition may be presented at an earlier date, and so as to prevent the possible loss of a parliamentary session in the event of errors being discovered too late to be remedied.

(b.) The Board have found that in some instances a misapprehension has prevailed as to the period within which the advertisements and notices prescribed by section 176 of the Public Health Act must be issued. The section provides that the advertisements shall be published during three consecutive weeks in the months of September, October, or November, and it is necessary that the three weeks in which the publication takes place should all be included in the same month, whichever of those above-mentioned is selected for the purpose. Moreover, the notices to the owners, lessees, and occupiers of the lands which it is proposed to purchase must in all cases be served in the month immediately following that in which the advertisements are published.

(c.) The Board have also found that in some cases the deposit of the plan of the proposed undertaking at the place to be named in the advertisement referred to in

section 176 (2) (hereinafter referred to as the "deposited plan") has not been made until after the advertisement has been published, but they are advised that the deposit should always be made at such time as to enable the deposited plan (and sections, if any) to be seen at all reasonable hours at the prescribed place so soon as the first advertisement appears. The deposited plan should be marked "Deposited plan" when deposited, and should (together with the sections, if any) remain open to inspection at all reasonable hours from the date of the deposit until the time when it is sent to the Board with the petition in accordance with paragraph 7 (b) of these Instructions. When the deposited plan (and sections, if any) are returned by the Board, they should be re-deposited and remain at the prescribed place and be open to inspection at all reasonable hours until the Bill to confirm the Provisional Order has received the Royal assent.

Appendix.

7.—(a.) As regards the deposited plan and the book of reference, the following directions must be strictly complied with:—

- (1.) The deposited plan, which should be carefully corrected, *on the ground*, should show not only the lands to be purchased, but also the manner in which those lands will be utilized for the purposes in view, and the position, as nearly as practicable, of any buildings, tanks, reservoirs or other works to be erected or constructed on the lands. The position in relation to the lands of any sewers, pipes or other works which may be contemplated as part of the undertaking for which the lands are required, should also be shown. In the case of land required for making a new street or for widening a street, the frontage line of the new street, or of the street when widened, should be shown by a hard line of colour, and the deposited plan should be accompanied by sections showing the proposed level of the new street in relation to the adjoining lands and to any existing streets which will communicate with the new street, and showing any alteration in the levels of the street to be widened or altered, so far as it affects lands in that street or the communication with any existing streets.
- (2.) The deposited plan should be coloured so as to distinguish the lands proposed to be actually purchased, and each parcel of land, notwithstanding that several may belong to one owner, should be separately numbered, the outside boundary being defined by a hard line, and the buildings (if any) on each parcel being linked into it, so that it may be seen to what properties each number applies.
- (3.) The book of reference should also be prepared, *on the ground*, at the same time as, and in conjunction with the deposited plan, each parcel of land being numbered to correspond with the deposited plan, and being described so as to show clearly what properties are covered by each number.
- (4.) A copy of the book of reference should be placed with the deposited plan at the time of deposit.

(b.) The petition should be accompanied by a copy of the deposited plan (and sections, if any), or of so much thereof as relates to the petition, and by a book of reference (in duplicate). The deposited plan (and sections, if any) should also accompany the petition for comparison with the copy, and when returned by the Board should be re-deposited in accordance with Instruction 6 (c).

8.—(a.) A statutory declaration specifying the manner in which the notices under section 176 were served upon the owners, lessees, and occupiers should be made by the person who served them, and the service must be effected strictly in accordance with one of the modes prescribed by section 267 of the Act. The service should be effected by a competent and responsible person.

(b.) A similar declaration should be made by the clerk to the local authority, showing that all the other requirements of section 176 have been duly complied with, and the following exhibits should be annexed, viz.:—(1) Copies of the newspapers containing the advertisements; (2) a copy of the form of notice, and (3) a statement showing with reference to the numbers on the deposited plan, the several parcels of land in respect of which notice was served upon each owner, lessee, and occupier, and what reply, if any, has been received from the owner, lessee, and occupier in respect of each parcel of land.

9. In the case of land required for widening a street, the fact that the street is repairable by the inhabitants at large should be stated in the petition.

10. The declaration or declarations should be sent to the Board with the petition.

11. Standing Orders 38 and 39 of both Houses of Parliament, extracts from which

Appendix. are appended on page 5, (a) must be complied with, and in carrying out the provisions of the former Standing Order, each house to be taken should be indicated (a) in the statement, and (b) in the copy of the plan referred to in the Standing Orders, by reference to the number on the deposited plan. The houses to be taken should be shown by a distinctive colour on the copy of the plan, and the number of persons of the labouring class resident in *each* of the houses should also appear in the statement.

12. The Board should, immediately after the last of the deposits required by the Standing Orders has been made, be furnished with an *affidavit* for production to the examiners of Standing Orders, in proof that the requirements of the Standing Orders referred to have been complied with.

13. Where the taking of the land will not involve the acquisition of ten or more houses occupied, either wholly or partially, by persons belonging to the labouring class as tenants or lodgers, this fact should be stated in the *affidavit*, so as to show that the Standing Orders do not apply.

14. Every statutory declaration and affidavit must be made or sworn before a justice of the peace or a commissioner for oaths, and must be stamped with a half-crown *impressed* stamp.

15. The Board have been advised that two or more local authorities cannot jointly petition for a Provisional Order to enable them to put in force the compulsory powers of the Lands Clauses Acts. Either each local authority must present a separate petition in respect of the particular lands which they require, or else the several local authorities must combine under section 285 of the Public Health Act, 1875, for the purpose of carrying the proposed scheme into execution, and a petition must be presented by one of them with regard to all the land required. If the latter course is taken, an agreement under the section should be entered into before application is made for the Provisional Order.

16. If the local authority intend to apply for a Provisional Order to enable them to purchase lands compulsorily in connection with proposed works of sewerage or water supply, some of which will lie outside their district, they will probably find it convenient to satisfy the requirements of section 32 or section 54 of the Public Health Act, when they are taking the necessary proceedings for the Provisional Order; but the advertisements and notices under those sections should be distinct from the advertisements and notices under section 176 of the Act. If this course is adopted it may have the effect of preventing delay at a subsequent stage of the proceedings in cases where advertisements and notices under section 32 or section 54 have to be issued before the works for which the land is required can be commenced. Section 53 should also be complied with, where it is intended to construct a reservoir to hold more than 100,000 gallons of water.

Applications for Provisional Orders for the constitution of United Districts under Section 279 of the Public Health Act, 1875.

1. The application should be made by a resolution of the local authority of each of the districts proposed to be formed into a united district. The resolutions should specify the purposes for which the united district is to be constituted. A copy of the resolution, certified by the clerk, should be forwarded to the Board.

2. The application should be made not later than the 21st December next, and it is desirable that it should be sent in before that date if possible.

[Extracts from Standing Orders.]

STANDING ORDER 38 (HOUSE OF COMMONS).

"In the case of any Bill which contains power to take compulsorily or by agreement, in any parish in the metropolis, twenty or more houses, or as regards England and Wales, exclusive of the metropolis, in any city, borough or other urban sanitary district, or in any parish or part of a parish not being within an urban sanitary district ten or more houses, occupied either wholly or partially by persons belonging to the labouring class as defined by Order 183 A * as tenants or lodgers, or which revives or extends any such power, the promoters shall deposit in the *Private Bill Office*§ and at the office of the central authority, as defined in Order 183 A * on or before the 31st day of December, a statement of the number,

description and situation of such houses, the number (so far as can be ascertained) of persons residing therein, and a copy of so much of the plan (if any) as relates thereto. . . .”

* In Standing Order 38 (House of Lords) the reference is to Order 111.

§ In Standing Order 38 (House of Lords) the “Office of the Clerk of the Parliaments” is substituted.

STANDING ORDER 39 (HOUSE OF COMMONS).

“Whenever plans, sections, books of reference or maps are deposited in the case of an application to any public department or county council for a Provisional Order duplicates of the said documents shall at the same time be deposited in the *Private Bill Office* *: provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on § the 30th day of November.”

* In Standing Order 39 (House of Lords) the “Office of the Clerk of the Parliaments” is substituted.

§ By Standing Order 39 (House of Lords) the duplicates are required to be deposited “on or before” the date mentioned.

STANDING ORDER 183A (HOUSE OF COMMONS).

Standing Order 183 A * (House of Commons) defines the expression “labouring class” as including “mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them.”

“The expression ‘central authority’ means as regards England and Wales, exclusive of the metropolis, the Local Government Board. . . .”

“The word ‘Bill’ includes a Bill confirming a Provisional Order.”

* The corresponding Standing Order (House of Lords) is No. 111.

[*N.B.—It is particularly requested that all Petitions, Statutory Declarations, Affidavits, Notices, and other such Documents may be on foolscap paper of the usual size, and that, whenever it will not involve additional expense, such documents may be printed or lithographed so as to facilitate examination.*]

HUGH OWEN, *Secretary*.

Local Government Board, Whitehall,
16th September, 1895.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD BY THE COUNCILS OF URBAN DISTRICTS FOR PROVISIONAL ORDERS TO CONFIRM IMPROVEMENT SCHEMES UNDER PART I. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890 (53 & 54 VICT. c. 70).

(16th September, 1895.)

1. The application must be made by a petition of the local authority, containing the particulars required by section 8 of the Housing of the Working Classes Act, 1890. The petition should be under the seal of the local authority.

2. The petition must be presented not later than the 31st October, if the advertisements of the scheme were published in September; not later than the 30th November if they were published in October; and not later than the 21st December, if they were published in November.

3. (a) Attention is drawn to the provision in section 7 of the Act empowering

Appendix. — local authorities to issue in the months of September and October, or of October and November, the advertisements and notices which are required before they can apply for a Provisional Order to enable them to obtain lands by compulsory purchase. It is very desirable that the local authority should avail themselves of this power, if they propose to make an application under the section in question.

(b) The section provides that the advertisements shall be published during three consecutive weeks in the months of September, October, or November, and it is necessary that the three weeks in which the publication takes place should all be included in the same month, whichever is selected for the purpose. Moreover, the notices to the owners, lessees, and occupiers of the lands proposed to be purchased must in all cases be served in the month immediately following that in which the advertisements are published.

4. The petition should be accompanied by the following documents:—

(a) A copy of the official representation.

(b) Two copies of the improvement scheme.

(c) Two copies of the estimate of the cost of carrying the scheme into effect.

(d) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working class who will be displaced, and the number for whom, and the place or places at which, dwelling accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, the reasons for this course must be stated, and the distance by the nearest public thoroughfare from that area must be given.

(e) A statement showing in what way it is proposed to deal with the area included in the scheme, and with the place or places at which dwelling accommodation for the working class is to be provided, and also what sanitary arrangements are proposed.

(f) Particulars should also be given showing by reference to the numbers of the properties on the maps (1) the area included in the official representation; (2) any lands (a) excluded from such area by the local authority; or (b) included in it by the local authority, under section 6 (1) (a) of the Act, and the reasons for such exclusion or inclusion; (3) any lands included for widening existing approaches to the unhealthy area or otherwise for opening out the same for purposes of ventilation or health, under section 6 (1) (b); and (4) the lands proposed to be taken compulsorily.

(g) Maps showing (1) the area included in the official representation, and (2) in the improvement scheme, (3) any site where dwelling accommodation is to be provided which is not within the area included in the scheme, and (4) the position of each site in relation to the area included in the scheme. The several properties should be numbered consecutively on the maps showing the area included in and accompanying the improvement scheme (which maps are hereinafter referred to as the "deposited maps") so as to correspond with a book of reference which should be forwarded in duplicate.

(h) A statutory declaration, specifying in which of the modes mentioned in section 7 of the Act the notices have been served. This declaration should be made by the person who served the notices.

(i) A statutory declaration made by the clerk to the local authority, showing that all the other requirements of section 7 of the Act have been complied with, and that the petition states the names of the owners or reputed owners and lessees or reputed lessees, who have dissented in respect of the taking of their lands. Copies of the newspapers containing the advertisements and also of the form of notice served on the owners lessees and occupiers, should be annexed to the declaration as exhibits.

5. Standing Orders 38 and 39 of both Houses of Parliament, extracts from which are appended on page 3, (a) must be complied with, and in carrying out the provisions of the former Standing Order each house to be taken should be indicated (a) in the statement, and (b) in the copy of the deposited maps, by reference to the number on the deposited maps. The houses to be taken should be shown by a distinctive colour on the copy of the maps, and the number of persons of the labouring class resident in *each* of the houses should also appear in the statement.

Appendix.

6. The Board should, immediately after the last of the deposits required by the Standing Orders has been made, be furnished with an *affidavit* for production to the examiners of Standing Orders in proof that the requirements of the Standing Orders referred to have been complied with.

7. Every statutory declaration and affidavit must be made or sworn before a justice of the peace or a commissioner for oaths, and must be stamped with a half-crown *impressed* stamp.

[Extracts from Standing Orders.]

STANDING ORDER 38 (HOUSE OF COMMONS).

"In the case of any Bill which contains power to take compulsory or by agreement, in any parish in the metropolis, twenty or more houses, or as regards England and Wales, exclusive of the metropolis, in any city, borough or other urban sanitary district, or in any parish or part of a parish not being within an urban sanitary district, . . . ten or more houses, occupied either wholly or partially by persons belonging to the labouring class as defined by Order 183 A* as tenants or lodgers, or which revives or extends any such power, the promoters shall deposit in the *Private Bill Office* § and at the office of the central authority, as defined in Order 183 A* on or before the 31st day of December, a statement of the number, description and situation of such houses, the number (so far as can be ascertained) of persons residing therein, and a copy of so much of the plan (if any) as relates thereto. . . ."

* In Standing Order 38 (House of Lords) the reference is to Order 111.

§ In Standing Order 38 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

STANDING ORDER 39 (HOUSE OF COMMONS).

"Whenever plans, sections, books of reference or maps are deposited in the case of an application to any public department or county council for a Provisional Order . . . duplicates of the said documents shall at the same time be deposited in the *Private Bill Office**; provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on § the 30th day of November."

* In Standing Order 39 (House of Lords) the "Office of the Clerk of the Parliaments" is substituted.

§ By Standing Order 39 (House of Lords) the duplicates are required to be deposited "on or before" the date mentioned.

STANDING ORDER 183A (HOUSE OF COMMONS).

Standing Order 183 A* (House of Commons) defines the expression "labouring class" as including "mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any of such persons who may be residing with them."

"The expression 'central authority' means . . . as regards England and Wales, exclusive of the metropolis, the Local Government Board. . . ."

"The word 'Bill' includes a Bill confirming a Provisional Order."

* The corresponding Standing Order (House of Lords) is No. 111.

[N.B.—It is particularly requested that the *Petition, Declaration, Affidavit, Notices, and other Documents* may be on foolscap paper of the usual size, and that whenever it will not involve additional expense, such documents may be printed or lithographed so as to facilitate examination.]

HUGH OWEN, *Secretary*.

Local Government Board, Whitehall,
16th September, 1895.

Appendix.

INSTRUCTIONS AS TO REPRESENTATIONS BY TOWN COUNCILS TO THE LOCAL GOVERNMENT BOARD UNDER SECTION 54 OF THE LOCAL GOVERNMENT ACT, 1888, WITH RESPECT TO THE ALTERATION OF THE BOUNDARIES OF BOROUGHES.

(16th September, 1895.)

1. The representation should be embodied in a memorial of the town council under their corporate seal, and should be printed on paper of foolscap size, and on one side only of the paper.

2. The memorial (of which twelve copies should be sent to the Board) should specify, with reference to a map the particular alterations desired, and should state in detail the reasons upon which the town council rely in support of their representation. The town council should also embody in their memorial, in every case in which it is sought to include in the borough a rural parish or part of a rural parish, proposals in conformity with the provisions of section 54 of the Local Government Act, 1894.

The memorial should embody definite proposals as regards the following matters:—(a) The mode in which the areas sought to be included in the borough and the parts of parishes (if any) which will remain outside should be dealt with for parochial purposes; (b) The continuance, alteration, dissolution or constitution of parish councils in respect of the rural areas (if any) which will remain outside the borough; (c) The number of guardians or rural district councillors, as the case may be, at present elected for each parish or ward of a parish affected within and without the borough, and the number to be elected for each parish or ward of a parish as proposed to be altered; and (d) In the case of urban parishes affected, it should be stated by whom the appointment of overseers is made.

3. The map accompanying the memorial to the Board should be an ordnance map, on the scale of not less than six inches to the mile, and should be coloured and annotated so as to show clearly (a) the existing boundary of the borough, (b) the alteration of boundary proposed by the representation, and (c) the entire boundaries of any urban districts, and of any contributory places in rural districts which will be affected by the proposal. The map should moreover indicate the positions in the borough and in any other area affected by the representation, of all churchyards, and of all burial grounds, whether provided under the Burial Acts, the Public Health (Interments) Act, 1879, or under any local Act, and of all public elementary schools, whether voluntary schools or schools provided by a school board.

4. (a) Where a borough is divided into wards, and it is proposed, as consequential upon the alteration of the borough boundary, to increase or decrease the number of the wards or to alter the boundaries of such wards, an additional ordnance map on the scale of not less than six inches to the mile should be coloured and annotated so as to show clearly the present boundaries, the apportionment of councillors among the existing wards, and the proposed alterations as regards wards and their boundaries, and the proposed apportionment of councillors.

(b) A similar map should be supplied in every case in which a representation in favour of the alteration of the boundary of a borough not divided into wards comprises also a proposal for the division of the borough into wards.

(c) The maps referred to in the above instructions should accompany the memorial to the Board.

(d) Where a borough is not divided into wards, and it is not proposed, as consequential upon the alteration of the borough boundary, to divide it into wards, this should be stated in the memorial.

5. A duplicate of each of the maps referred to in Instructions 3 and 4 must, simultaneously with the transmission of the memorial to the Board, be deposited in the town clerk's office and be open to inspection at all reasonable hours without payment by any local authority having jurisdiction within the areas affected by the scheme or by any person affected by the proposal. Notice in writing of such deposit should, at the same time, be given to each local authority interested, and such deposit should also be advertised in some one and the same local newspaper circulating in the areas affected by the proposal in two successive weeks, and the first advertisement should appear within seven days after such deposit.

6. Copies of the memorial should be forwarded to the several local authorities

Appendix.

(including the county council) having jurisdiction within the areas affected by the scheme, and a copy of the map referred to in Instruction 3 should accompany the copy of the memorial which is sent to the county council. When the memorial and maps are transmitted to the Board, a certificate under the hand of the town clerk, that the requirements of Instructions 5 and 6 have been complied with should be furnished to the Board. The certificate should enumerate the several local authorities to whom the notices mentioned in Instruction 5 have been given.

7. An application to the Board in accordance with these instructions being an application within the scope of Standing Order 39 of each House of Parliament, the requirements of that Order (see extract appended) must be satisfied.

8. The Board should, immediately after the deposit required by the Standing Order has been made, be furnished with an *affidavit* (stamped with a half-crown *impressed* stamp, and sworn before a justice of the peace or a commissioner for oaths) for production to the examiners of standing orders in proof that the requirements of the standing order have been complied with.

[*Extract from Standing Order 39.*]

STANDING ORDER 39 (HOUSE OF COMMONS).

“Whenever plans, sections, books of reference or maps are deposited in the case of an application to any public department or county council for a Provisional Order . . . duplicates of the said documents shall at the same time be deposited in the *Private Bill Office* *; provided that with regard to such deposits as are so made at any public department or with any county council after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on † the 30th day of November.”

* In Standing Order 39 (House of Lords) the “Office of the Clerk of the Parliaments” is substituted.

† By Standing Order 39 (House of Lords) the duplicates are required to be deposited “on or before” the date mentioned.

[*N.B.—The Board have caused supplemental instructions to be prepared shewing the additional information with which they will require to be furnished in connection with representations such as those to which the foregoing instructions relate, and copies of these supplemental instructions can be obtained upon application to the Board.*]

HUGH OWEN, *Secretary*.

Local Government Board, Whitehall, S.W.,
16th September, 1895.

SUPPLEMENTAL INSTRUCTIONS AS TO REPRESENTATIONS BY TOWN COUNCILS TO THE LOCAL GOVERNMENT BOARD UNDER SECTION 54 OF THE LOCAL GOVERNMENT ACT, 1888, FOR THE ALTERATION OF BOROUGH BOUNDARIES.

(16th September, 1895.)

In connexion with any representation which may be made to the Board under section 54 (1) (a) of the Local Government Act, 1888, in favour of an alteration of the boundary of a borough, it is necessary that they should be furnished with carefully compiled statements, giving the information hereinafter indicated:—

I. Area and Population.

- (a.) Of the borough according to the census of 1891; and
- (b.) Of the borough at the date of the memorial.

Appendix.

II. *Rateable Value and Rates Levied.*

Particulars as to the rateable value and assessable value of the borough in 1891, and at the date of the memorial, and information as to the amount in the £, purpose, and nature of each rate levied in the borough during each of the three financial years immediately preceding the date of the memorial.

III. *Property.*

Particulars as to the property belonging at the date of the memorial to the corporation acting by the council—

- (a.) As the municipal authority, or as an authority under any general or local Act for purposes other than sanitary purposes; and
- (b.) As the urban authority or district council, or as an authority under any general or local Act for sanitary purposes.

In these statements moneys arising directly from the levy of rates or moneys invested for, or applicable to, the discharge of loans need not be specified; but the statements should give, in as concise a form as possible, information as to the description, situation, extent, value, income, authority for acquisition, and nature of tenure of the property.

IV. *Debts.*

Particulars as to the amount, purpose, date of borrowing, authority for borrowing, method of repayment, &c., of the several loans, wholly or in part outstanding at the date of the memorial and contracted by the corporation acting by the council—

- (a.) As the municipal authority, or as an authority under any general or local Act for purposes other than sanitary purposes; and
- (b.) As the urban authority or district council, or as an authority under any general or local Act for sanitary purposes.

It should be stated whether any of the loans have been advanced by the Public Works Loan Commissioners, and any loans so advanced should be distinguished in the statement.

V. *Burial Boards.*

The statement under this head should specify whether the town council are a burial board, and, if so, under what authority, and whether their area of jurisdiction as such burial board is co-extensive and conterminous with the entire area of the borough.

If their area of jurisdiction as the burial board is not co-extensive and conterminous with the entire area of the borough, the precise contents and boundaries of such area of jurisdiction should be stated.

As regards any part of the borough which is not within the area of jurisdiction of the town council as a burial board, information should be supplied as to whether such part is within the area of jurisdiction of any other burial board or of a joint committee acting under section 53 (2) of the Local Government Act, 1894. If so, the precise contents and boundaries of the area of jurisdiction of such last-mentioned burial board and the contents and boundaries of such part should be stated. Where such burial board is a joint burial board, the names of the contributory boards should be mentioned.

Where the town council is not a burial board, and a burial board has jurisdiction in the borough, a statement as to the loans contracted by such burial board and remaining wholly or in part outstanding at the date of the memorial should be given.

VI. *School Boards.*

The statement under this head should show :—

- (1.) Whether the borough is subject to the jurisdiction of a school board;
- (2.) If the borough forms part of a united school district, the name of such district and the names of the several school districts comprised therein;
- (3.) If the borough is a school district contributory to a school-owning district, the name of such school-owning district;
- (4.) If the school board for the borough has combined with other school boards, the effect of the agreement entered into;

- (5.) The loans contracted by the school board or school boards and remaining wholly or in part outstanding at the date of the memorial; and
 (6.) The proportion of local rates leviable for school board purposes.

Appendix.

VII. *Combinations and Agreements.*

Copies of all agreements which may have been entered into by the town council as the urban authority or district council with any adjoining authority under such enactments as sections 28, 61, 131 and 285 of the Public Health Act, 1875, should be furnished, together with information as to what combinations (if any) have been effected under such enactments as sections 191 and 286 of the Public Health Act, 1875, and if any agreements have been entered into in accordance with provisions contained in local Acts, copies thereof, together with the local Acts under which they were made, should be forwarded to the Board.

VIII. *Joint Boards and Port Sanitary Authorities.*

The statement should show whether the borough is included in a united district for any sanitary purposes.

The statement should also specify, in cases where the borough, or any part thereof forms part of or abuts on any part of a port or the waters of such port, whether a port sanitary authority has been constituted for such port or any part thereof or for two or more ports including such port. Information should further be supplied as to the name of the authority acting as the port sanitary authority, and whether the town council contribute to the expenses.

IX. *Adoptive Acts.*

The statement under this head should show whether the undermentioned Acts (or any parts thereof) have been adopted in the borough:—

- The Infectious Disease (Notification) Act, 1889,
- The Infectious Disease (Prevention) Act, 1890,
- The Public Health Acts Amendment Act, 1890,
- The Museums and Gymnasiums Act, 1891,
- The Public Libraries Acts,
- The Baths and Washhouses Acts,
- The Private Street Works Act, 1892.

X. *Added Areas.*

As regards each of the urban districts and contributory places or parts of such districts and places proposed to be included in the borough, the Board should be furnished with similar information to that indicated under the foregoing heads I. to IX.

The further information indicated below should also be furnished in every case in which it is proposed to include a rural parish or part of a rural parish in a borough:—

- (a.) It should be stated whether the parish has a parish council;
- (b.) What are the present arrangements as regards highways, and what arrangements are proposed;
- (c.) Whether, in addition to the Acts cited under head IX, any of the following Acts have been adopted:—
 - The Lighting and Watching Act, 1833,
 - The Burial Acts, 1852 to 1885,
 - The Public Improvements Act, 1860.

In every case in which an Act has been adopted for part only of a parish, the precise area and date of adoption, and the name of the authority for the execution of the Act should be specified.

XI. *Previous Proposals for Extension.*

The Board should be informed whether any unsuccessful applications have been previously made to Parliament or to the Board for the inclusion in the borough of the areas now sought to be annexed or any part of them, and, if so, they should be furnished with full particulars as to any such application, and, as regards any

Appendix. application made to Parliament, with a copy of the Bill embodying the proposal, together with a print of the minutes of evidence given before the committee to which the Bill was referred.

XII. *Appendix.*

An appendix of documents and miscellaneous information should also be forwarded with the memorial.

As examples of documents which should invariably be found in the appendix may be mentioned :—

- A copy of each charter in force in the borough ;
- A copy of each agreement between the local authorities to which reference is made in the statements under heads VI and VII ;
- A copy of every local Act and of every Act confirming a Provisional Order in force in the borough and in any areas proposed to be added ;
- A copy of the list of electoral divisions of the county, with the area and population of each division correctly inserted ;
- A copy of every Order made by the county council or by a joint committee under the Local Government Act, 1894, affecting the areas proposed to be included in the borough ;
- A list of the petty sessional divisions of the county, with a statement of the contents and boundaries of each such division which may comprise any area affected by the proposal ;
- A similar list and statement of the coroners' districts ;
- A copy of the last printed abstract of the borough treasurer's accounts ; and
- A statement showing, as regards all works in any area proposed to be added to the borough, the actual cost of, and the outstanding liability in respect of, each of such works.

In any case in which the town council may consider it expedient to submit proposals for the alteration of any local Act in force in any area affected by the representation, a detailed statement of the amendments desired should be forwarded, together with a print of the local Act in question.

Local Government Board, Whitehall, S.W.

16th September, 1895.

[*And see* "ELECTRIC LIGHTING"; "TRAMWAYS."]

TRAMWAYS.

BOARD OF TRADE RULES FOR CARRYING TRAMWAYS ACT, 1870, INTO EFFECT—
August, 1886.

(*Ante*, p. 967, note (f).)

INDEX.

ABATEMENT of

certain nuisances on premises, 74.

election petition, 1139.

nuisances generally—duty of local authority as to, 115; entry on premises in connection with, 124; notice requiring, to be given by local authority, 115; form of such notice, 441; complaint to justice on non-compliance with such notice, 119; order of Court as to, 120; form of order of Court, 442; penalty for contravention of order, 122; sale of matters removed by local authority in execution of order, 123; proceedings for, in Superior Court, 128; proceedings for, when caused by several persons, 338.

ABSENCE

of chairman of district council, vice-chairman to act in case of, 755.

from meeting, vacation of office of district councillor by, 743.

ABSTRACT

of audited accounts of district or parish council, publication of, 328, 754, 1377.

ABSTRACTION

of water fraudulently, penalty for, 86.

ACCEPTANCE OF OFFICE

by guardian, or urban or rural district councillor, 746.

ACCESS to

parish books and documents, 715.

water-meter by local authority, 85.

ACCOMMODATION,

for working classes displaced under Housing of Working Classes Act, 1890, provision of, 606—608, 630; appropriation or purchase of lands for providing, 614.

ACCOUNTABILITY of

officers of companies, 803.

officers of local authority, 269.

ACCOUNTS,

adjustment of, on alteration of areas, 377; adjustment of, consequent on transfer of powers, &c., 398.

Baths and Wash-houses Commissioners', 848, 849.

before the appointed day, of authorities affected by Local Government Act, 1894, audit of, 772.

declaration as to, may be required by auditor, 327, 789.

deposit of, for inspection prior to audit, 326, 327.

district fund, 278.

gas undertakings, 869, 978, 981—986.

highway rates made by urban authority, 296.

improvement commissioners', audit of, 328.

inspection of, by auditor at any time, 939.

INDEX.

ACCOUNTS—*continued.*

- joint committees of district, and district and parish councils, General Order of Local Government Board as to, 1378.
- library authorities', 1326.
- local authority—form and date for making up, of, 325, 754; under Housing of Working Classes Act, 1890...652.
- local boards', General Order of Local Government Board as to, 1364.
- officers to render, 269; audit of accounts of officers, 331.
- overseers for purposes of Act, audit of, 332.
- parish councils', 754.
- parochial charity, 712.
- private street works, to be kept separately, 690.
- production of, to auditor, 326, 327; to Local Government Board inspectors, 390.
- rural authorities'—audit of, 331, 754; to what date to be made up, 754; form of, 754; inspection of, by parochial electors, 755; publication of report of auditor as to, and the abstract of, 754, 1377.
- urban authority's, as burial board, 931.
- urban authority's, being council of borough—audit of, 325; to what date to be made up, 754; form of, 754.
- urban authority's, not being council of borough—abstract of, to be published, 328, 754; audit of, 326, 327, 754; to what date to be made up, 754; form of, 754; report on, to be made by auditor, 328, 754.

ACCUMULATION of

- manure, &c., power to require removal of, 72; penalty for, 76.

ACQUISITION of *See also* PURCHASE; COMPULSORY ACQUISITION.

- land for allotments, 1217—1219; land under improvement schemes, 611—614; under reconstruction schemes, 628, 629; for purposes of working class lodging-house, 643; land or buildings by parish council, 702.

ACT,

- confirming Provisional Order, repeal or alteration of, 391; to be public statute, 39.
- local. *See* LOCAL ACTS.

ACTIONS,

- against persons acting in execution of statutory or other public duty, 692 *et seq.*
- against or by local authorities, interrogatories in, 358 *n.*
- saving in Local Government Act, 1894, for existing or pending, 778.

ADJUSTMENT of

- accounts and liabilities on alteration of areas, 377.
- accounts, &c., arising out of transfer of powers, &c., 398.
- property and liabilities—orders and schemes under Local Government Act, 1888, may provide for, 520; general provisions as to, in Local Government Act, 1888...521; general provisions as to, in Local Government Act, 1894...760, 761.

ADMINISTRATION of

- affairs of small rural district by council of adjoining district, 722.

ADMINISTRATIVE COUNTY,

- boundary of, for purposes of first election of county council, 514.
- county borough to be, 508.
- definition of, 526.
- places in, to form part of county for all purposes, 519.
- quarter sessions boroughs to be part of, when, 509, 512.

ADMIRALTY

- property, saving for, 415.

ADMISSION. *See also* ENTRY.

- to museum or gymnasium, 1285.

INDEX.

ADOPTION of

Baths and Wash-houses Acts, 846, 847; by urban authority, 28.
Housing of Working Classes Act, 1890, Part III., 641, 642.
Infectious Disease (Notification) Act, 1889...541; (Prevention) Act, 1890...
549; rescission of adoption of last Act, 558.
Labouring Classes Lodging Houses Acts by urban authority, 28.
Museums and Gymnasiums Act, 1891...1284.
private streets as highways, 198, 589, 689, 690.
Private Streets Works Act, 1892...680.
public bridges over canals, &c., 166.
Public Health Acts Amendment Act, 1890...560.
Public Improvement Act, 1860...928.
Public Libraries Acts, 1321; in urban districts, 1335.
public roads, 165.

ADOPTIVE ACTS UNDER LOCAL GOVERNMENT ACT, 1894,

alteration of area in which, in force, 750.
not to be adopted in urban district without consent of district council, 758.
property, debts, and liabilities of superseded authority under, 750.
transfer—to parish council of powers, &c. of authority under, in force in part of
parish, 749; to parish councils, or parish and urban district councils, when
in force in more than one parish, 749; to urban district council, when in
force in whole or part of urban district, 757.
what are, 749 *n*.

ADULTERATION

of food and drugs. *See* SALE OF FOOD AND DRUGS ACTS.

ADVANTAGE,

definition of, in Public Bodies (Corrupt Practices) Act, 1889...538.

ADVERTISEMENT,

interest in newspaper containing, does not disqualify member of district council,
742.
notice to be given by, of—intention to apply for confirmation of byelaws, 257;
intention to construct sewage works without district, 61, 62; intention to
construct reservoir, 80; purport of proposed Provisional Order, 391;
undertaking for which lands required compulsorily, 246.
penalty for destroying or defacing, 592.

AFFAIRS OF CHURCH,

definition of, 765.

AGREEMENT,

adjustment by, of property and liabilities under Local Government Act, 1888...
521; under Local Government Act, 1894...760.
by local authority, as to—construction or adoption of public bridges over
canals, &c., 166; construction or alteration of sewer or drain for which
owner liable, 573; communication of sewer or drain without district with
sewer within, 53; communication of sewer with sewer of adjoining district,
60; making of new public roads, 165; making of mines under
sanitary works, 471; reception of sick into hospitals, 148; repair, &c. of
turnpike roads and county bridges, 166; supply of water, 83, 85; supply
of water to authority of adjoining district, 87; supply of water for public
baths or for trading or manufacturing purposes, 91; supply of water to
universities, 94.
saving for provisions of, as to rates, 302.

AGRICULTURAL

land, assessment of, to general district rate, 283; to special expenses rate, 311.

AGRICULTURAL GANGS ACT, 1867,

text of, 939—941.

INDEX.

AIR SPACE

about buildings, byelaws as to, 204, 205.

ALDERSHOT,

saving for powers of Secretary for War as to, 756.

ALIENS,

disqualification of, for office, 739.

ALKALI ACTS,

transfer to Local Government Board of powers, &c. under, 455.

ALKALI, ETC. WORKS REGULATION ACTS,

alkali works and alkali waste, 1115, 1116.

complaint of sanitary authority as to nuisance, 1122.

definitions in, 1123.

inspection, 1118—1120; appointment of additional inspector on application of sanitary authority, 1119.

legal proceedings under, 1120—1123.

Provisional Order for preventing discharge of gases from salt and cement works, 1117.

registration of works, 1117.

rock-salt works not within, 1318.

service of notices, 1122.

special rules may be made by owners of works, 1120.

sulphuric acid and other specified works, 1116, 1117, 1218.

text of Act of 1881...1115—1124; of Act of 1892...1318.

ALLEY,

in unhealthy areas, improvement schemes for, 601 *et seq.*

opening of, power to purchase houses for, 624.

street includes, 12.

ALLOTMENTS,

acquisition of land for, 1217.

appeal to county council on failure of sanitary authority to provide land for, 1279, 1280.

combination of parishes and contributory places for purposes of, 1225.

compulsory acquisition of lands for, 704 *et seq.*, 1217. *See also* COMPULSORY

ACQUISITION OF LANDS FOR ALLOTMENTS.

crops on, compensation for, 1205, 1277.

duty of sanitary authority to acquire land for, 1216.

exercise and recreation, nuisances on, 114 *n.*

expenses and receipts of sanitary authority in respect of, 1223.

holding or management of, by parish councils, 701, 711.

improvement and adaptation of land for, 1219.

letting and use of, 1220.

loans of sanitary authority for purposes of, 1223.

management of, 1219.

managers of—appointment of, by sanitary authority, 1219; election of, by parliamentary electors, 1221, 1222; power of parish council to apply for election of, 702.

managers, wardens, &c. of, transfer to parish council of powers, &c. of, 702.

rating of, to general district and special expenses rates, 679.

recovery of rent and possession of, 1221.

register of tenancies of, 1226.

regulations as to, model, with memorandum of Local Government Board thereon, 1382.

representation as to, by parish councils, 702; by registered electors or rate-payers, 1216.

sale of glebe lands for purposes of, 1234.

sale of superfluous or unsuitable land acquired for, 1224.

transfer of—to parish councils when held by trustees, 711; to sanitary authorities by wardens or trustees, 1225.

transfer to county council of powers of defaulting authority as to, 1280, 1281.

use of schoolroom for purposes in connection with, 699, 1281.

INDEX.

- ALLOTMENTS ACT, 1887,**
application of certain provisions of, to compulsory acquisition of lands under Local Government Act, 1894...709.
Local Government Board to be county authority under, in county borough, 509.
text of, 1216—1226.
- ALLOTMENTS ACT, 1890,**
text of, 1279—1282.
- ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887,**
text of, 1204—1207.
- ALLOTMENTS RATING EXEMPTION ACT, 1891,**
text of, 679.
- ALLOWANCE,**
by auditor, appeals against, 327, 799, 923.
of highway rate by justices not required in urban districts, 311.
by Local Government Board of—byelaws, 257; construction of reservoir, 80, 81; sewage works without district, 63.
to owner when rated instead of occupier, 282, 283.
of special expenses rate by justices, not required, 311.
- ALTERATION of**
Act confirming provisional order, 391.
areas, 371—379.
areas and boundaries, provisions as to, in Local Government Act, 1888...516,
et seq; in Local Government Act, 1894...733—736.
byelaws, 256.
drains, 573.
local Acts by provisional order, 397.
sewers, 49, 573.
works in contravention of byelaws as to new streets and buildings, 205.
- AMBULANCE,**
provision of, by local authority, 143; in connection with isolation hospital, 1342.
- AMENDING**
scheme or order under Local Government Act, 1888...520.
- ANALYSIS,**
under Sale of Food and Drugs Acts, 1011—1013; certificate of analysis, 1013, 1017.
of tea on importation, 1016.
of water of well alleged to be polluted, 96.
- ANALYST,**
in borough with population under 10,000...513.
under Sale of Food and Drugs Acts, appointment and duties of, 1010.
in smaller quarter sessions boroughs, 511.
- ANIMALS,**
byelaws as to keeping of, 72.
destruction of, by order of justice, 138.
unfit for food—inspection and examination of, 136; penalty for exposure of, for sale, 138; seizure of, 136.
- ANNOYANCES**
in streets, provisions of Town Police Clauses Act, 1847, as to, 908—914.
- ANNUAL**
meeting of non-borough district council, 271, 272 *n*; chairman to be elected at, 426; date of, 428.
report to be made by local authority to Local Government Board, 275.

INDEX.

ANNUITY,

grant of, to owner on completion of works for rendering dwelling-house fit for habitation, 622—624.
under Local Loans Act, 1875...1019.

ANSWERS,

false, to questions as to infectious disease in house, penalty for, 554.

APPEAL,

against apportionment of—cost of water supply to two or more houses in rural district, 460; expenses of works common to two contributory places, 309.
against auditors' decisions, 327, 328, 799, 923; instructions of Local Government Board as to, 1374.
as to compensation for lands acquired under improvement schemes, 669.
to confirming authority on default of medical officer to make official representation as to unhealthy areas, 610.
against demolition order, 621; against order for demolition of obstructive building, 625.
to Local Government Board—in cases of expenses recoverable summarily, and of private improvement expenses, 360; against orders of county councils as to areas and boundaries, 518, 736; against order of county council for compulsory acquisition of land, 706; against refusal of county council to make order for compulsory acquisition of land, 705.
against order of summary jurisdiction court as to nuisances, 123; against orders generally of summary jurisdiction court, 363 *et seq.*
by parish councils as to valuation lists, poor rate or county rate, 701.
to quarter sessions under Public Health Acts Amendment Act, 1890...563.
against rates under Public Health Act, 1875...363; against special expenses rates, 311.
against refusal of rural authority to give certificate as to water supply to house, 461.
against requirement of rural authority as to water supply, 459.

APPEARANCE

of local authority in legal proceedings, 349.

APPLICATION of

loans obtained from Public Works Loan Commissioners, power of Local Government Board to satisfy themselves as to, 324 *n.*, 1036, 1089, 1125.
moneys received for redemption of private improvement rate, 293; received in respect of private street works, 690.
penalties, 337; penalties under Acts incorporated with Public Health Act, 410.
proceeds of sale of superfluous lands, 244; of lands acquired under Housing of Working Classes Act, 1890...652.

APPOINTED DAY,

definition of, in Local Government Act, 1888...529; in Local Government Act, 1894...771, 772.

APPOINTMENT of

analyst, 1010.
arbitrators, 250, 251, 521, 630, 663, 671.
assistant overseers by parish council, 701; by urban district councils or other representative body in urban district, 730; by guardians, repeal of provisions as to, 768.
chairman of non-borough district council, 426.
committees—by urban authority, 272; by non-borough district council or parish council, 752; for purposes of Housing of Working Classes Act, 1890...652; under the Public Libraries Acts, 1324; for purposes of technical instruction, 1270.
deputy medical officer of health, 260, 263, 264, 501, 616; by county council, 501.
district medical officer as medical officer of health, 263.

INDEX.

APPOINTMENT of—*continued.*

- inspector of nuisances, 260, 263; for two districts jointly, 263.
- joint committees by parish and district councils, 753.
- medical officer to carry out regulations as to epidemic diseases, 152.
- medical officer of health—by urban authority, 260, 501, 505; by rural authority, 263, 501, 505; for two or more districts jointly, 263; by county councils, 501; for purposes of regulations for prevention of epidemic diseases, 152; in London for purposes of Housing of Working Classes Act, 1890...651.
- officers of urban authority, 260; officers of rural authority, 263.
- overseers—by parish council, 700; by urban district council or other representative body in urban district, 730; by guardians, on non-receipt of notice of appointment by other authority, 748.
- parochial committees, 273, 274 *n*, 713.
- person to perform duty of defaulting local authority, 394.
- receiver, 321.
- trustees of parochial charity by parish council, 711, 712.
- umpires, 252.
- vice-chairman of board of guardians or non-borough district council, 755.

APPORTIONMENT,

- expenses for which owner liable, conclusiveness of, 341, 342.
- expenses of—cleansing common courts and passages, 581, 582; constructing new sewer by local authority, 54; private street works, 176, 682, 686, 687, 692; providing water supply to two or more houses in rural districts, 458, 460; works for common benefit of two contributory places, 308, 309.
- increased value caused by demolition of obstructive buildings among adjoining buildings, 626.
- between owner and rural authority of cost of water supply to house, 460.
- between rating districts of common expenses, 284.

APPROACH

- to bridge, construction or adoption of, by urban authority, 166.

APPROPRIATION

- of land, for accommodation of persons displaced under improvement scheme, 614; for purposes of working class lodging-houses, 643; for open space, 1214.

APPROVAL by. *See also* SANCTION; and CONSENT.

- charity commissioners of—number of additional trustees of parochial charity to be appointed by parish council, 711; order of county council as to charities, 734; transfer to parish council of property held by trustees, 711.
- county council of byelaws of quarter sessions borough as to locomotives, when required, 510.
- local authority of intended work within month of notice or deposit of plan, &c., 217.
- Local Government Board of—market tolls, 233; order extending definition of infectious disease, 542; promotion or opposition to bill in Parliament, 1001; regulations as to removal of infected person from ship to hospital, 144; resolution for constituting special drainage district, 378, 379.

ARABLE

- land, assessment of, to general district rate, 283; to special expenses rate, 311.

ARBITRATION. *See also* ARBITRATION ACT, 1889.

- adjustment of property and liabilities by, under Local Government Act, 1888...521; under Local Government Act, 1894...760.
- by Board of Trade, under Regulation of Railways Act, 1868...941.
- costs of, 252.
- by court of summary jurisdiction on claims under 20*l.*, 256.
- of Local Government Board—general provisions as to, in Local Government Act, 1888...522, 523; as to main roads, 493—495.
- reference to, mode of, 250.
- reference to, as to certain works affecting rivers, canals, &c., 417, 418.

INDEX.

ARBITRATION—*continued.*

regulations as to, 251.

settlement by, of—compensation for crops on allotments and cottage gardens, 1205; compensation for lands acquired under improvement schemes, 612, 613, 663 *et seq.*; compensation for lands acquired under Part II. of Act of 1890...630 *et seq.*; compensation for lands acquired compulsorily for allotments, 708 (*see also* LANDS CLAUSES CONSOLIDATION ACTS, 1845, 1860, &c.); differences between water company and local authority, 79; difference as to vesting of drain used in connection with main road, 494; dispute as to apportionment of cost of private street works, 176; dispute as to communication of drain or sewer without district with sewer within, 53; dispute as to compensation for damage by local authority, 402; dispute as to loss caused by setting back building, 201; dispute as to substituted sewers under docks, &c., 420; dispute as to whether water rights injuriously affected, 420.

submission to—delivery of appointment of arbitrator deemed, 251; may be made rule of court, 252.

ARBITRATION ACT, 1889,

application of Act to references under statutory provisions, 1267.

definitions in, 1267.

provisions to be implied in submissions, 1268.

references by consent, out of court, 1262—1265; references under order of court, 1265, 1266.

repeals effected by, 1267, 1269.

statement of case pending arbitration, 1266.

text of, 1262—1269.

witnesses may be compelled to attend under, 1266.

ARBITRATOR. *See also* ARBITRATION ACT, 1889.

appointment of—by both parties, 250; on vacancy, 251; to be under seal of authority, 251; revocation of, 251.

appointment of, by confirming authority for purposes of Part I. of Housing of Working Classes Act, 1890...663, 671.

appointment of, by Local Government Board—under Local Government Act, 1888...531; for purposes of Part II. of Housing of Working Classes Act, 1890...630.

award of, within what time to be made, 252; finality of, 253.

for compensation payable for lands compulsorily acquired under improvement or re-construction schemes, evidence receivable by, 613, 631.

costs of reference to be in discretion of, 252.

declaration to be made by, 252.

powers, &c., of, under Part I. of Housing of Working Classes Act, 1890...671.

production of documents to, and examination of witnesses by, 252.

umpire to be appointed by, 252.

ARCH,

building of, under carriage-way, penalty for, 58.

under street, repair of, 586.

AREAS. *See also* BOUNDARIES.

in which adoptive Acts in force, alteration of, 750.

altered by Local Government Act, 1894, power to deal with certain matters arising out of, 761.

and boundaries—alteration of, by order of Local Government Board under Public Health Act, 1875...371—379; provisions as to, in Local Government Act, 1888...516 *et seq.*; provisions as to, in Local Government Act, 1894...733—736; regulations of Local Government Board as to notices and inquiries under section 57 of Act of 1888...1388.

in more counties than one, alteration of, by order of joint committees, 735.

of cellar dwellings, 98.

of local government, boundaries of, not to intersect, 521.

ARREARS

of highway rates, recovery of, on constitution of urban district, 165.

INDEX.

ART

gallery, establishment of, 1323.
school, provision of, under Public Libraries Acts, 1323; transfer of, to local authority, 1301.

ARTICLES,

cleansing and disinfection of, 141; destruction of infected, 142; disinfecting apparatus for, 143.

ARTIZANS' AND LABOURERS' DWELLINGS ACTS. *See also* HOUSING OF WORKING CLASSES ACT, 1890.

definition of, 21.
repeal of, 660, 678.
urban authority to be local authority under, 28.

ASHES,

byelaws for preventing nuisance from, 72.
receptacles for, provision of, by urban authority, 73.

ASHPIT. *See also* SANITARY CONVENIENCE.

alteration of, may be required, 68.
byelaws as to, 204, 205, 578, 579.
cleansing of, 69—72.
definition of term, 564.
examination of, on complaint of nuisance, 68.
nuisance not to be created by, 68; nuisance from, may be dealt with summarily, 108.
penalty for building house without, 63.
provision of, may be enforced, 63, 64; for factories, 65, 66.
public, provision of, by urban authority, 66, 67.
rooms over, not to be used for dwelling or sleeping, 580.

ASSESSMENT

of general district rate, 282, 283, 548, 679.
of highway rate in urban district, 293.
to special expenses rate, of certain properties at one-fourth, 311, 548, 679.
of water rates, 83.

ASSIGNMENT

of powers, &c., to joint board, 380; to port sanitary authority, 384.

ASSISTANT

clerk to union, when to be clerk to rural authority, 263.
officers, appointment of—by urban authority, 260; by rural authority, 263.
overseers, appointment of—by parish councils, 700; by urban district council, or other representative body in urban district, 730; by guardians, repeal of provisions as to, 768.

ASSIZE,

county borough not having commission of, 508.
definition of, 528.

ASYLUMS BOARD

in metropolis, powers of, to provide hospitals, 149 *n*.

ATTENDANCE at

audit of accounting persons, and owners and ratepayers, 327, 925.
conferences of members and officers of local authority, 476, 477.

ATTORNEY-GENERAL,

consent of, to—proceedings for recovery of penalties, 336; proceedings for recovery of penalties from officers, 476; prosecutions under Public Bodies (Corrupt Practices) Act, 1889...537.
sanction of, to proceedings for prevention of pollution of streams, 96.

INDEX.

AUDIT,

- of accounts of—improvement commissioners, 328; joint committees of district, or district and parish councils, 754; general order of Local Government Board as to the notice of audit and report of auditor on accounts of such joint committees, 1378; joint committees for purposes of Rivers Pollution Prevention Act, 1876...500; local boards and their officers, provisions as to in local board accounts order, 1370; officers of local authority, 332, 754; overseers for purposes of Public Health Act, 331; rural authority, 331, 754; urban authority being council of borough, 325; urban authority not being council of borough, 326, 754; local authority under Housing of Working Classes Act, 1890...652; authorities before appointed day under Local Government Act, 1894...772.
- attendance at, of accounting persons, and of ratepayers and owners, 327, 925.
- extraordinary, 939.
- notice of, 326, 923; publication of, 754, 1381.
- production at, of books, vouchers, &c., 327.
- regulations may be made by Local Government Board as to, 1102.

AUDITOR,

- appeals against decision of, 327, 328, 799, 923; instructions of Local Government Board, as to appeals, 1374.
- appointment of district of, 1101.
- attendance before, of accounting persons, 327, 925.
- balance due from officers, how to be ascertained and certified by, 923.
- borough, audit by, of accounts of urban authority, 325.
- certificate of, recovery of moneys due under, 328, 797, 924, 925; form of certificate, 924.
- costs of, on proceedings against persons failing to attend audit, 925.
- decisions of, on untaxed solicitors' bills, finality of, 331.
- declaration as to correctness of accounts submitted may be required by, 327, 789.
- disallowances and surcharges by, 327, 328.
- expenses sanctioned by Local Government Board not to be disallowed by, 1228.
- financial statement to be submitted to, 1101.
- inspection by, of accounts at any time, 939.
- notice by—of audit to be advertised, 754, 923; to person surcharged, 942.
- proceedings by, for recovery of certified sums, 328.
- production to, of books and vouchers, 327.
- remission by Local Government Board of disallowances and surcharges of, 923.
- report on accounts by, 328, 754, 1377, 1381.
- salary of, 1101, 1102.

AUTHENTICATION of

- bye-laws, 256.
- notices, orders, &c., 358.

AWARD of

- arbitrator or umpire, within what time to be made, 252; finality of, 253; stamp duty on, 255 *n*.
- arbitrator under Part I. of Housing of Working Classes Act, 1890...664, 665.

BAKEHOUSE REGULATION ACT,

- definition of, 21.
- local authority under, urban authority to be, 28; rural authority to be, 30.

BAKEHOUSES,

- enforcement by sanitary authority of provisions of Factory and Workshop Acts, as to, 1176, 1360.
- lime-washing, &c., of, 1081, 1176, 1360.
- sanitary defects in, 28, 29 *n*, 30, 1081, 1176, 1360.
- sleeping places near, 1081, 1176, 1360.

INDEX.

BALCONIES,

erected or used on public occasions, safety of, 588.

BALLOT

Act, 1872—application of, to elections under Local Government Act, 1894...
745; application and adaptation of, to election of urban district councillors,
1446, 1454; to election of rural district councillors, 1472, 1481.
boxes, loan of, for elections, 747.

BANK

of England, definition of, 527.
holiday, procedure if day fixed for poll of owners and ratepayers falls on, 436;
provision as to, in Local Government Act, 1894...763.

BANKRUPTCY,

disqualification for office by, 739—744.
priority of rates in distribution of property of bankrupt, 1255.

BARBED WIRE ACT, 1893,

text of, 1337, 1338.

BATHING,

public, incorporation of provisions of 10 & 11 Vict. c. 89, as to, 235; text of
such provisions, 922, 923.

BATHS AND WASH-HOUSES ACTS. *See also* ADOPTIVE ACTS, ETC.

accounts under, and their audit, 848, 849.
adoption of, 846, 847; by urban authority, 28.
appeals under, 852.
appropriation of land for purposes of, 850.
authority for execution of, in urban districts, 28.
bye-laws under, 851, 856, 1078.
charges under, for use of baths, &c., 852, 853, 896, 1078, 1079.
closing of bath and conversion into gymnasium, &c. during winter, 1078.
commissioners under, appointment, &c., of, 848, 896; incorporation of, 849.
covered swimming bath may be provided under, 1078.
definition of, 21.
erection of baths, &c., 851.
expenses of executing, 849.
income under, 849.
incorporation with, of parts of Companies Clauses Consolidation Act, 45, 850;
of Lands Clauses Acts, 896.
loans under, 850; to be sanctioned by Local Government Board, 455, 1079.
proportion of baths, &c., for labouring class, 853, 896.
purchase of existing baths, 851, 1130; of lands for baths, 850, 1130.
sale, &c., of lands, or of baths when too expensive, 852.
supply of gas or water to baths, &c., 91, 851.
text of Act of 1848...846—854; of Act of 1847...896, 897; of Act of 1878...
1078, 1079; of Act of 1882...1130.

BEDDING,

destruction of infected, 142.
disinfection of, 553.
provision of apparatus for disinfecting, 143.
sale or transmission of infected, penalty for, 144, 145.

BEGGARS,

resorting to common lodging-houses, report as to, 103.

BENEFICIARIES,

of parochial charity, names of, to be published, 712; trustees not to be, 713.

BICYCLES,

to be carriages under Highway Acts, 523.
regulations as to, 523.

[11]

INDEX.

BILL,

of costs of solicitor, taxation of 331.

in parliament—to confirm provisional order, on petition, to be referred to select committee, 391; to confirm provisional order for improvement scheme, costs may be awarded in certain cases, 605; to confirm provisional order under Allotments Acts, costs may be awarded, 1219; opposition to, or promotion of, by local authority, sanctions and approvals required to, 1001, 1002; rural authority cannot promote, 77 *n*.

BLOOD BOILER,

nuisance arising from trade of, 134.

restrictions on establishment of trade of, 131.

BOARD OF AGRICULTURE,

application to, for regulation or enclosure of common, 703, 704.

copy of certain orders of county councils to be sent to, 763.

powers of, to exempt market from requirement as to providing weighing accommodation for cattle, 1209, 1303.

provisional orders of, under Commons Act, 1876...1050—1052.

BOARD OF TRADE,

arbitrations by, under Regulation of Railways Act, 1868...941.

confirmation by, of bye-laws as to wires, &c., 568.

copy to be sent to, of resolution adopting Part II. of Public Health Acts Amendment Act, 1890...560.

exemption by, of particular apparatus from bye-laws as to wires, 568.

licences of, for supply of electricity, 1158.

provisional orders of—under Electric Lighting Acts, 1159, 1160, 1228; under Gas and Water Works Facilities Acts, 943—948, 1006; under Tramways Act, 1870...949—953, 969—971.

regulations of, for protection of safety under Electric Lighting Acts, 1231—1234.

rules of, in relation to applications under Electric Lighting Acts, 1160, 1170—1173.

transfer to Local Government Board of powers of, under Alkali Acts and Metropolis Water Acts, 455.

BOARD ROOM,

and offices of guardians, use of, by rural district council, 755.

BOATMEN,

licensing of, 236.

on waters in public parks, &c., 591.

BOATS,

pleasure. *See* PLEASURE BOATS.

on waters in public parks, 591.

BONE BOILER,

nuisance arising from trade of, 134.

restrictions on establishment of trade of, 131.

BONFIRE,

penalty for making, in street, 913.

BOOKS,

obscene, penalty for sale of, in streets, 913.

officers to deliver up, on demand, 269.

of parish, custody of, 715.

BOROUGH,

alteration of boundary of, 516, 734; circular and instructions of Local Government Board, as to representations for alteration of boundary, 1516, 1524.

bridges, 1151, 1156.

bye-laws for good government of, 1132.

INDEX.

BOROUGH—*continued.*

council of. *See* COUNCIL OF BOROUGH.

county. *See* COUNTY BOROUGH.

creation of, transfer to council of powers of improvement commissioners or local board on, 408; provision to be made as to effect on parishes and parish councils, 751.

definition of, 3, 526.

fund, when expenses of urban authority payable out of, 276.

Improvement Act district within, dissolution of, 371.

non-county, included in term county district, 718.

with population under 10,000, application of Local Government Act, 1888, to, 513.

rate, when expenses of urban authority payable out of, 276.

to be urban sanitary district, 24, 25.

not being urban district, provisional order dealing with, 515.

BOROUGH FUNDS ACT, 1872,

text of, 1000—1002.

BORROWING POWERS of. *See also* LOANS.

local authorities, 314—324.

port sanitary authorities and joint boards, 324.

BOUNDARIES,

of administrative counties for purposes of first election of county council, 514.

alteration of, by Local Government Board, 371—379.

areas and, provisions as to, in Local Government Act, 1888...516 *et seq.*; in

Local Government Act, 1894...733—736.

of areas of local government not to intersect, 521.

of borough or county, alteration of, 516, 734.

of electoral division, alteration of, 516.

entry on lands for purpose of ascertaining, 400.

of parishes, alteration or definition of, 516, 517, 519.

settlement of boundary of place not having known and defined, 373.

of urban district, settlement of dispute as to, 379.

of urban and rural districts, alteration or definition of, 516, 517.

BOUNDARY COMMISSIONERS,

report of, to be considered by county councils, 735.

BREAD,

inspection and examination of, 136, 140.

unfit for food—destruction of, by order of justice, 138; exposure of, for sale, 138; seizure of, 136.

BREAKING UP of

main roads, 496.

streets—without consent, penalty for, 169; for laying water-pipes, 83, 84, 876, 877; for laying gas-pipes, 863—865; for laying tramway, 954.

BRIBERY,

definition of, 1194. *See also* CORRUPT AND ILLEGAL PRACTICES.

BRICKS,

burning of, nuisance from, 132 *n.*

restriction on throwing, into streams, 592.

BRIDGE,

agreements between highway authorities for improvement, &c., of, 1302.

borough, provisions of Municipal Corporations Act, 1882, as to, 1151, 1156.

contribution by county council towards erecting, &c., 1093.

county. *See* COUNTY BRIDGE.

of main roads, maintenance, &c., of, 490.

crossing navigable river, canal, &c., saving for interference with, without consent, 415.

public, over canal, &c., construction or adoption of, 166.

street includes, when, 12.

INDEX.

BRINE PUMPING (COMPENSATION FOR SUBSIDENCE) ACT, 1891,

- allowance of byelaws under, 1297.
- compensation board, under—audit of accounts of, 1297; chairman of, 1290; constitution, election and incorporation of, 1290; committees of, 1291; dissolution of, 1297; meetings and proceedings of, 1290, 1291, 1298; vacancies among members of, 1290.
- compensation districts under—alteration of, 1289; applications for, 1288; provisional orders forming, and their confirmation, 1289.
- compensation fund under, and claims thereon—abatement of compensation payable, 1296; appeals on questions of title, 1293; application of compensation moneys, 1294; claims for compensation, making and dealing with, 1292; damages for which compensation may be made, 1291; establishment of fund, 1291.
- computation of brine pumped, 1295.
- contracts prior to, 1294.
- definitions in, 1298.
- power of Local Government Board inspectors, under, 1296.
- purchase and sale of land by compensation board under, 1294.
- rates under—appeals against, 1295; estimate and making of, 1294; limit of, 1295; mode of assessing, 1295.
- reserve fund under, 1296.
- restriction of rights of action under, 1297.
- returns to compensation board, 1295.
- text of, 1288—1298.

BUILDING. *See also* DWELLING-HOUSE.

- acquisition or provision of, by parish councils, 702.
- air space about, byelaws as to, 204, 205.
- bringing of, beyond adjoining building, consent required to, 531.
- byelaws, power of rural authority to make, 579.
- conversion of, into building of another class, prevention of, 579.
- dangerous or ruinous, 223, 891, 892.
- definition of, 17 *n*.
- described in deposited plan as other than dwelling-house, not to be used as such, 584, 585.
- drainage of, byelaws as to, 204, 205, 578.
- existing, certain byelaws to apply to, 578.
- on ground filled up with offensive matter, penalty for, 580.
- hoardings to be erected during progress of, 585, 892, 893.
- of house—without drain, penalty for, 57; without sufficient watercloset, privy and ash-pit accommodation, penalty for, 63, 64.
- line—may be prescribed on re-erection of building, 201; regulation of, 204, 531; exemption of railway buildings from provisions as to, 205.
- new—byelaws as to, 204, 205, 578; continuing offence against byelaws as to, 217; pulling down or removal of, when contrary to byelaws, 205, 217; retention of plans of, by local authority, 216 *n*; what to be deemed to be, 222.
- obstructive. *See* OBSTRUCTIVE BUILDINGS.
- part of, not to be required to be sold, 829.
- precautions during erection or repair of, 223.
- re-erection of, when to be deemed new building, 222.
- over sewer, penalty for, 57, 58.
- unfit for human habitation, closing of, 121, 122, 204, 619, 620, 673, 674; not intended for human habitation, prohibition of use of, as dwelling-house, 222 *n*, 584.
- ventilation of, byelaws as to, 204, 205.

BURIAL,

- of bodies removed to mortuaries, 153, 154.
- body of infected person to be removed from hospital for burial only, 555.
- of dead, justices may in certain cases order, 555.
- exclusive rights of, provisions of Cemeteries Clauses Act, 1847, as to, 902—904.

INDEX.

BURIAL—*continued.*

grounds, disused—byelaws as to, 453; building not to be erected on, 1199, 1213; games and sports not to be allowed on, 1212; laying out of, 228 *n*, 453; removal of tombstones and monuments in, 1213; transfer of, to local authority, 1113, 1213.

BURIAL ACTS. *See also* ADOPTIVE ACTS, ETC.

text of certain sections of Act of 1857...925, 926; of Act of 1860...930, 931; of Act of 1862...932.

BURIAL BOARD,

establishment of, for district not separately maintaining its own poor, 926; consent of urban district council required to establishment of, in urban district, 758.

local board to be, in certain cases, 453.

local board or improvement commissioners acting as, transfer of powers, &c. of, to urban authority, 408, 409.

transfer of powers, &c. of, to urban authority, 454, 757.

urban authority may be constituted, 925; expenses of urban authority acting as, 930; mortgages of urban authority acting as, 932; separate accounts to be kept by urban authority acting as, 932.

BUSINESS

of district council other than borough council, power to make regulations as to, 426.

BUTTER,

sale of margarine as, 1210, 1211.

BYELAWS,

bathing, 235, 922, 923.

boats on waters in public parks, &c., and as to boatmen, 227 *n*, 591.

under Brine Pumping (Compensation for Subsidence) Act, 1891...1295, 1297.

building—certain byelaws to apply to existing as well as new buildings, 578, 579; power of rural authority to make, 579.

cabmen's shelters, 589.

cemeteries, 465.

cleansing of footways and pavements, 71.

closing of buildings unfit for human habitation, 204.

common lodging-houses, 102.

commons, 1046, 1053.

of companies, provisions of 8 & 9 Vict. c. 16, as to, 804.

conversion of building of one class into building of another class, 579, 580.

of council of borough under Municipal Corporations Act, 1882...259, 1132, 1133. disused burial grounds, 453.

fruit-pickers, 469.

generally—alteration of, 256; authentication of, 256; confirmation of, 257; copies of, to be obtainable by ratepayers, 258; deposit and inspection of, before confirmation, 257; destroying or defacing of, penalty for, 401; evidence of, 258; notice of intention to apply for confirmation of, 257; nullity of, if repugnant to law, 256; penalties may be imposed by, 257; printing, &c., of, 258; provisions as to, not to apply to regulations, 259.

hackney carriages and their drivers, 922; confirmation of, 475.

height of rooms, 578.

hop-pickers, 410.

inconsistent with Public Health Act, repeal of, 410.

locomotives on roads, 1098, 1099; in larger quarter sessions boroughs, 510.

lodging-houses, 106, 484; as to seamen's lodging-houses, 1345.

markets, 232, 233, 861; confirmation of, 475.

mortuaries, 153.

museums and gymnasiums, 1285.

new building, power of rural authority to make, 205 *n*, 579.

INDEX.

BYELAWS—*continued.*

- new streets and buildings—power to make, 204, 205, 578; provision may be made by, for giving of notices, deposit of plans, and for alteration or removal of works contravening, 205; not to apply to railway buildings, 205; commencement of works under and removal of works contrary to, 217; what is a continuing offence under, 217.
- offensive trades in urban district, 134.
- omnibuses and their drivers and conductors, 1261, 1262.
- paving of yards and open spaces, 578.
- pleasure boats, 227 *n*, 236, 591.
- preventing—keeping of animals so as to be injurious to health, 72; nuisance from snow, filth, &c., 72.
- under Public Health Acts Amendment Act, 1890, general provisions as to, 564.
- public walks and pleasure grounds, 226.
- removal of—house refuse, 72, 581; of offensive or fæcal matter, 580, 581.
- roads, 1096, 1098.
- of rural authority, copies of, to be sent to overseers, 258.
- sanitary conveniences, 575.
- saving for existing, 414, 773.
- secondary means of access to premises, 578.
- ships carrying petroleum, 990.
- slaughter-houses, 234, 894, 895; confirmation of, 475.
- structure of floors, hearths, and staircases, 578.
- telegraph and telephone wires, &c., 567, 569.
- tents and vans used for habitation, 484, 485.
- tramways, 962—964, 971.
- water supply to water-closets, 578.
- whirligigs, swings, and shooting galleries, 588.
- working class lodging-houses, 644, 648, 653, 677.

CABMEN'S

- shelters, provision and regulation of, 589.

CANAL,

- abutting on street not to be chargeable with private street expenses, when, 690.
- assessment of, to general district rate, 283; to special expenses rate, 311.
- boats. *See* CANAL BOATS ACTS.
- bridge over or tunnel under, construction or adoption of, 166; saving for bridges over, 415.
- not to be injuriously affected without consent, 420.
- provisions of Railway and Canal Traffic Act, 1888, as to, 1243 *et seq.*
- reference to arbitration as to certain works affecting, 417, 418.
- saving for navigation of, and supply of water to, 415.
- sewage to be purified before discharge into, 40.
- substitution of new for existing sewers under, 419.

CANAL BOATS ACTS,

- certificate of registration under, 1074, 1200; illegal detention of certificate, 1075.
- definitions in, 1076, 1201.
- education of children on boats, 1074; annual report of Education Department as to, 1201.
- enforcement of, 1200.
- entry on boats by officer of local authority, 1074.
- expenses of local authority under, 1075.
- infectious diseases on boats, 1074.
- inquiries and reports by Local Government Board under, 1200.
- marking and numbering of boats, 1074, 1201.
- recovery and application of penalties, 1076, 1201.
- registration of boats for use as dwellings, 1073; registration authority, 1075.

INDEX.

CANAL BOATS ACTS—*continued.*

regulations by Local Government Board as to registration, &c., of, 1075, 1078 ;
text of such regulations, 1391 ; regulations by Education Department as to
school certificates, 1201 ; penalty for contravention of regulations, 1200.
schools may be established under, by canal company, 1076.
text of Act of 1877...1073—1077 ; of Act of 1884...1200, 1201.

CANDIDATE,

for district council, use of school room by, 699.
at elections under Local Government Act, 1894, nomination of, 744.
maximum expenses of, 745.

CARETAKER,

occupation by, of building not intended as dwelling-house, 584.

CARPETS,

penalty for beating, in streets, 913.

CARRIAGE,

for infected persons, provision of, by authority, 143.
of offensive or faecal matter, bye-laws as to, 580.
for use on tramways, 958.

CARRIAGE-WAY,

building of vault or arch under, prohibition of, 57, 58.
of private streets, power to compel paving, &c. of, 176.

CARTS,

penalty for obstructions by, or improper driving of, in streets, 911.

CASE,

statement of, by quarter sessions on appeal from summary jurisdiction court,
364.

CASTING VOTE

of chairman at meeting of non-borough district council, 428 ; of joint board,
429.

CASUAL

vacancy. *See* VACANCY, CASUAL.

CATTLE,

impounding of stray, 909.
weighing of, provision of accommodation for, in connexion with markets and
fairs and auction sales, 1207, 1303.

CELLAR,

building of, under carriage-way of street, penalty for, 58.
doors, coverings for, 891.
dwellings—closing of, 99 ; definition of occupation of, 99 ; existing, conditions
of letting or occupation of, 97 ; penalty for letting or occupation of, 98 ;
prohibition of letting or occupation of, 97.
sewers constructed under, 38.
stagnant water in, penalty for, 74.
under street, repair of, 586.

CEMENT

works. *See* ALKALI, ETC. WORKS REGULATION ACTS.

CEMETERY. *See also* BURIAL GROUND.

acquisition, construction, and maintenance of, by local authority, 465.
burials in, 901.
bye-laws as to, 467 n.
chaplain of, 902.
consecration of part of, 901.
construction of, without district, 465.

INDEX.

CEMETERY—*continued.*

distance of, from houses, 899.
donation of land for, 465.
enclosure and fencing of, 900.
grant of exclusive right of burial in, 902, 903.
Local Government Board may require provision of, 465.
registration of burials in consecrated part of, 902.

CEMETERIES CLAUSES ACT, 1847,

definitions in, 897, 898.
incorporation of, with Public Health (Interments) Act, 1879...468.
provisions of, as to—access to special act, 906; accounts, 905; burials in cemetery, 901, 902; exclusive rights of burial and monuments, 902; making of cemetery, 899; payments to incumbents and parish clerks, 904, 905; preventing nuisances from cemetery, 900; protection of cemetery, 905; recovery of damages and penalties, 906.

CERTIFICATE of

auditor, recovery of moneys due under, 328, 797, 924, 925; form of, 924.
county council as to adoption by rural authority of Part III. of Housing of Working Classes Act, 1890...641.
inhabitants as to nuisance from offensive trade, 134.
inspector under Rivers Pollution Prevention Act, 1876, as to best practicable means, 1067.
Local Government Board—as to expenses of executing works of defaulting local authority, 396; as to grants under Local Government Act, 1888... 504 *et seq.*
medical officer of health as to—cleansing and disinfection of premises, 141; nuisance from offensive trade, 134; purification of houses, 73; removal from hospital for burial only of dead body of infected person, 555; retention in house of dead body of infected person, 554; sanitary condition of artisans' dwellings where exemption from inhabited house duty claimed, 1273.
medical practitioner as to—cases of infectious disease, 539; form of certificate, 540, 1429; gratuitous supply of forms of certificate, 540; cleansing and disinfection of premises, 141, 146, 554; nuisance from offensive trade, 134; purification of house, 73; removal of body of infected person from hospital for burial only, 555; retention in house of dead body of infected person, 554.
pawnbrokers, grant of, by district or county borough council, 727, 730, 1003.
rural authority as to sufficiency of water supply required before new house to be occupied, 461.

CERTIFIED SUMS,

payment of, to treasurer, 328.
proceedings by auditor for recovery of, 328, 797, 924, 925.

CERTIORARI,

proceedings not to be moved into superior court by, 350.
removal into Queen's Bench of decisions of district auditor by writ of, 327, 798.

CESSER

of jurisdiction of constituent authority on formation of joint board, 380.

CESSPOOL,

alteration, &c. of, 68.
bye-laws as to, 204, 205, 578.
cleansing of, 69—72.
drainage into, when local authority may require, 54; of new houses, 57.
examination of, on complaint of nuisance, 68.
nuisance not to be created by, 68; summary dealing with nuisance from, 108.
overflow or soakage from, penalty for, 74.
rooms over, not to be used for dwelling or sleeping, 580.

INDEX.

CHAIRMAN of

- district council other than borough council—absence of, from meeting, 427 ;
casting vote of, 425 ; election of, 427, 755 ; to be *ex officio* justice of peace,
718.
- guardians board, election and qualification of, 717.
- joint board, 429.
- local board, appointment of, on constitution of local board, 429.
- meeting of district council, casting vote of, 428.
- meeting of owners and ratepayers, who to be, 439.
- rural district council, qualification of, 721.

CHANNELLING of

- highways, 169.
- private streets, 176, 682 ; *see also* PRIVATE STREET WORKS.

CHAPEL,

- exemption of minister of, from expenses of private street works, 197, 688 ;
from poor rate, 197 *n*.
- substantial construction of, and means of ingress to and egress from, 586, 587.

CHAPLAIN

- of cemetery, appointment, &c. of, 901.

CHARGE,

- grant of, by way of annuity to owner on completion of works to render house
fit for habitation, 623 ; form of order as to, 623, 677 ; evidence of charge,
623 ; transfer of charge ; 624.
- on premises of expenses—of private street works, 687, 688 ; for which owner
liable, 341, 342.

CHARGES for,

- admission to parks on certain days, 591.
- use of baths, &c., 852, 853, 896, 1078, 1079.
- use of fire engines beyond district, 915.
- use of gymnasium, 1078, 1285.
- use of mortuary, 153.
- use of public sanitary conveniences, 575.
- use of slaughter-houses, 234.
- tenancy of working class lodging-houses, 644.

CHARITY COMMISSIONERS,

- approval of—to number of additional trustees of parochial charity to be
appointed by parish council, 711 ; to order of county council as to
charities, 734 ; to transfer to parish council of public property held by
trustees, 711.
- to be consulted by Local Government Board before making order as to trus-
tees of charity in urban district divided into wards, 731.
- decision by, of questions as to charities, 762.
- powers of, as to fuel allotments, 1054.

CHARTER,

- grant of, to borough—transfer to council of powers of urban authority on, 408 ;
provision to be made as to effect on parishes and parish councils on, 751.

CHEMICAL

- refuse not to be turned into sewers, 570, 571.

CHIEF RENT. *See* RENT-CHARGES.

CHIMNEYS,

- of new buildings, bye-laws as to, 204, 205.
- partitions between, materials of, 212 *n*.
- setting fire to, penalty for, 914.

INDEX.

CHOLERA,

memorandum of Local Government Board as to precautions against, 1404.
regulations of Local Government Board as to, 147, 151—153, 534; text of regulations as to, 1399.

CHURCH,

affairs of, definition of, 765.
clocks, repair and lighting of, 592.
exemption of incumbent of, from expenses of private street works, 197, 688;
from poor rate, 197 *n*.
interments within, 453.
substantial construction of, and means of ingress to and egress from, 586, 587.
term house does not include, 16 *n*.
yard, closed, repair and maintenance of, by parish council, 700. *See also*
BURIAL GROUND, CLOSED.

CHURCHWARDENS,

appointment of trustees of parochial charity, in place of, 711.
to cease to be overseers in rural parish, 700.
transfer to parish councils of powers, &c. of, 700.

CINDERS,

restriction on throwing, into streams, 592.

CINQUE PORT,

application of Local Government Act, 1888, to, 513.

CIRCULARS OF LOCAL GOVERNMENT BOARD, as to. *See also* MEMORANDA.

accounts order of local boards, 1344.
applications for provisional orders by town councils, 1516; by rural district councils, 1517; by urban district councils, 1515.
audit of accounts of joint committees of district or district and parish councils, 1378.
cholera regulations, 1399, 1406, 1408.
Dairies, Cow-sheds, and Milk-shops Amending Order, 1886...1425; to sanitary authorities where no dairy regulations in force, 1428.
elections of urban district councillors, 1439.
local government conferences, 1419.
model regulations for allotments, 1382.
order prescribing regulations as to inquiries, 1388.
order prescribing regulations and adaptations under sect. 9 of Local Government Act, 1894...1412.
registration of margarine factories, 1495.

CISTERN,

closing of polluted, 96.
included in term waterworks, 21.
public, vesting of, in local authority, 89.

CIVIL

and criminal proceedings, distinction between, 333 *n*, 334 *n*.

CLAIMS,

for entry on list of parochial electors, 739.
of owners and proxies to be entered on register, 433; forms of claims, 447, 448; form of notice as to, 446.

CLEANLINESS of

bakehouses, 1081, 1176, 1360.
common lodging-houses, bye-laws as to, 102.
factories and workshops, 1081.
lodging-houses, bye-laws as to, 106.

INDEX.

CLEANSING of

- ashpits, 69—72.
- common courts and passages, 581.
- earth-closets, privies, and cesspools, 69—72.
- footways and pavements, 71.
- infected houses and articles, 551, 552.
- lodging-houses, bye-laws as to, 106.
- offensive ditch or watercourse, 75.
- premises, 141; regulations as to epidemic diseases may provide for promotion of, 151.
- roads over county bridges, 166.
- sewers, 50.
- ships, 479 *n*.
- streets, 69—72.
- turnpike roads, urban authority may undertake, 166.

CLERK,

- to guardians, inspection of books of, for purpose of meetings, &c., of owners and ratepayers, 434.
- to local authority—appearance of local authority in legal proceedings by, 349; attendance of, at conferences, 476, 477.
- of peace—deposit with, of charging order under Housing of Working Classes Act, 1890...624; taxation by, of solicitors' costs, 331.
- to rural authority—who to be, 263; remuneration of, 263.
- treasurer or partner, not to be, 264.
- to urban authority, appointment, remuneration, and tenure of office of, 260.

CLOCKS,

- payment by urban authority of cost of repairing and lighting public, 592.
- provision, &c., of, by urban authority, 228.

CLOSING

- of cellar dwellings, 99.
- of house on two convictions for overcrowding, 129.
- of house unfit for habitation, 121, 122; proceedings for, under Part II. of Act of 1890...619, 620, 673, 674; form of summons for, 676.
- order, under Part II. of Housing of Working Classes Act, 1890—county council may obtain order, when, 634, 635; definition of, 618; form of, 676; penalty for non-compliance with, 620; proceedings by local authority to obtain, 619, 620, 673, 674; service of, 620.
- of park to public, 227 *n*, 591.

CLOTHING,

- destruction of infected, 142.
- disinfection of, 553.
- provision of apparatus for disinfecting, 143.
- sale or transmission of infected, penalty for, 144, 145.

COAL HOLES,

- in surface of street, repair of, 586.

COAL MINES REGULATION ACT, 1887,

- text of certain provisions of, 1226—1228.

COLDBATH PRISON,

- sale of, to Metropolitan Board of Works, 483.

COLLECTION of

- separate or special rate by poor-rate collector, 312.
- urban rates, 301.

COLLECTOR,

- list of defaulters to be made out by, 269.
- of local board, provisions as to accounts of, in Local Board's Accounts Order, 1370.
- payment to treasurer of moneys collected by, 269.
- of urban authority, appointment, remuneration, and tenure of office of, 260.

INDEX.

COLLEGIATE BODIES,
saving for, 421.

COMBINATION of
authorities—to provide hospital, 148 ; for purposes of epidemic diseases, 153 ;
for the purpose of executing works, 382.
riparian authorities as port sanitary authority, 384, 480.

COMMISSION,
of assize, oyer and terminer, county boroughs without, 508.
payment of, for negotiating loan, 315 *n*.
of peace, revocation of grant of, 513.

COMMISSIONERS,
baths and washhouses, 848, 849, 896.
improvement. *See* IMPROVEMENT COMMISSIONERS.
under Public Libraries Act, 1892, appointment, &c., of, 1320.
of sewers—vesting of sewers of, 32 ; saving for, 415.
of sewers of London—loans of, for purposes of Housing of Working Classes Act,
1890...616, 636 ; purchase by, of lands for purposes of working class
lodging-houses, 643.

COMMITTEES,
for purposes of Housing of Working Classes Act, 1890...652.
joint. *See* JOINT COMMITTEES.
of non-borough district council—appointment, term of office, and powers of,
752 ; rules as to proceedings of, 753, 774, 775 ; evidence of, minutes of,
774.
meetings and proceedings of, 274.
parochial. *See* PAROCHIAL COMMITTEES.
under Public Libraries Acts, 1324.
of rural authority, delegation to, of powers and duties, 273, 752.
of urban authority, appointment of, 272, 752.
for purposes of technical instruction, 1270.

COMMON. *See also* COMMONS ACT, 1876.
application to Board of Agriculture for regulation or enclosure of, 703, 704,
1045, 1047—1049.
courts and passages, cleansing of, 581.
lands—provisions of 8 Vict. c. 18, as to, 831—833 ; compensation money for
application of, 1128.
pasture—power to make scheme for provision of, 709, 1224 ; compulsory
acquisition of lands for, 709.
powers of district council as to, 725, 726.
seal—bye-laws to be under, 256 ; of improvement commissioners, 26 ; of local
boards, 26 ; mortgages to be under, 319.
service of compulsory purchase order, &c., upon persons having rights of, 247.

COMMON FUND of
joint board for united district, 381, 387.
port sanitary authority, 386, 387.
rural district—contributions to, mode of raising, 310, 311 ; general expenses to
be paid out of, 309 ; mortgages on security of, 315, 318.

COMMON LODGING-HOUSES,
access to, by officers of local authority, 104.
bye-laws as to, 102.
definition of, 99 *n*, 100 *n*, 105.
evidence as to family, in proceedings as to, 105.
infectious disease in—notice of, to be given, 103, 584 ; removal to hospital of
person suffering from, 143.
inspection of, 104 ; prior to registration, 101.
keeper of—names, &c., of, to be entered on register, 99 ; offences by, 104, 105 ;
penalty on, for failure to give notice of infectious disease, 584.
limewashing of, 103.

INDEX.

COMMON LODGING-HOUSES—*continued*.

- register of, to be kept, 99.
- registration of and of keeper, 101; when local authority may refuse, 101; notice of, to be affixed on house, 102.
- report of persons resorting to, may be required, 103.
- water supply to, 103.

COMMONABLE RIGHTS COMPENSATION ACT, 1882,

text of, 1127—1130.

COMMONS ACT, 1876,

- adjustment of rights in common, definition of term, 1045.
- applications for the regulation or enclosure of commons, 1045, 1047—1049.
- bye-laws as to commons, 1046, 1053.
- charity commissioners' powers as to fuel allotments, 1054.
- common regulated under, not to be enclosed without sanction of Parliament, 1057.
- county court's jurisdiction as to illegal enclosures, 1056, 1057.
- definitions in, 1058.
- field gardens and recreation grounds, provisions as to, 1054—1056.
- gravel digging on common, 1054.
- improvement of common, definition of term, 1046.
- local inquiries under, 1049.
- notice of intention to enclose common to be given, 1057.
- provisional orders under, rules as to making, confirmation, &c., of, 1050—1052.
- suburban commons, powers, &c., of urban authority as to, 1046, 1047.
- village and town greens, offences, &c., in connection with, 1056.

COMMUNICATION,

- of drains with sewers, 51, 52, 421, 572; of drain without district with sewer within, 53.
- pipes for supply of water, laying of, 84, 878, 879.
- of sewer without district with sewer within, 53.
- of sewers with sewers of adjoining district, 60.

COMPANIES,

- powers of, and loans to, for purposes of working class lodging-houses, 646, 647.

COMPANIES CLAUSES CONSOLIDATION ACT, 1845,

- definitions in, 799, 800.
- incorporation of certain provisions of, with Baths and Washhouses Acts, 850.
- provisions of, as to—accountability of officers, 803; borrowing of money, 800—803, 807, 808; bye-laws, 804; recovery of damages and penalties, 805, 807.

COMPENSATION,

- for common lands, taken compulsorily, application of, 1128.
- for crops, &c., on allotments and cottage gardens, 1205, 1277.
- for damage from brine pumping. *See* BRINE PUMPING (COMPENSATION FOR SUBSIDENCE) ACT, 1891.
- for lands—acquired under Part II. of the Housing of Working Classes Act 1890...630 *et seq.*; compulsorily acquired for allotments, 708, 1218; compulsorily acquired under improvement schemes, 612, 613, 663 *et seq.* *See also* LANDS CLAUSES CONSOLIDATION ACTS, 1845, 1860, &c.
- of officers for loss of office, or emoluments, 408, 768, 769.
- payment by local authority of—for damages generally, 402; for damage caused by setting back or forward of building, 201; for expenses incurred by tenants in removal, under Housing of Working Classes Act, 1890...651; for infected bedding, &c., destroyed, 142; for pulling down or purchase of site of obstructive building, 625, 626.
- for recreation grounds or field gardens, taken under Lands Clauses Acts, application of, 1129.
- for support of sanitary work, how to be borne and charged, 471.

INDEX.

COMPLAINT,

- as to default of local authority, 394, 460, 713.
- by householders—as to dwelling-house unfit for habitation, 618, 619; as to obstructive building, 624; copy of complaints to be sent to county council, when, 634.
- as to nuisance, making of—by local authority, 119; by individual, 126.
- as to nuisance arising from—alkali, &c. works, 1122; drain, 68, 573; offensive trade, 134.
- by parish councils—as to unhealthy dwellings and obstructive buildings, 701; as to default of rural district councils, 713.
- for payment of money, and information for criminal offences, distinction between, 333 *n.*, 334 *n.*
- in summary proceedings, limitation of time for making, 335.

COMPULSORY

- acquisition of lands under improvement scheme, 612, 613, 663—672; lands so to be taken to be distinguished in scheme, 603; acquisition of lands under reconstruction scheme, 628, 629.
- purchase of lands, 246 *et seq.* See also LANDS CLAUSES CONSOLIDATION ACTS, 1845, 1860, &c.

COMPULSORY ACQUISITION OF LAND BY PARISH COUNCIL OR FOR ALLOTMENTS. See also LANDS CLAUSES CONSOLIDATION ACTS, 1845, 1860, &c.

- for allotments, on petition of district council, electors or parish council, 704 *n.*, 705 *n.*; provisions of Allotments Act, 1887, as to, 1219—1221.
- application to, of certain provisions of Allotments Acts, 709; order of Local Government Board prescribing adaptations of provisions so applied, 1414.
- for common pasture, 709.
- compensation for—how to be settled, 708; no addition to be made to, in respect of compulsion, 708; who may appear and be heard before arbitrator, as to, 708.
- county borough, application to, of provisions as to, 709.
- expenses of county council as to, 709.
- land acquired, to whom to be assured, 709.
- memorial against confirmation of order, by whom and when to be presented, 706, 1417.
- notice in parish and to owners, &c., as to proceedings for, 704.
- orders for—making of, by county council, 705; by Local Government Board on refusal of county council, 705; confirmation or disallowance of, by Local Government Board, 707; by whom to be carried into effect, 708; to incorporate Lands Clauses Acts, and sections of Railways Clauses Consolidation Act, 1845, with adaptations, 708; service of, and of statement of effect of, 706.
- petition of parish or district council to Local Government Board against refusal of county council to make order for, 705.
- public inquiry as to—by county council, 704; powers of person holding, on behalf of county council, 708; costs of inquiries by county council, 708; by Local Government Board on refusal of county council to make order, 705; on presentation of memorial against order, 707; provisions governing, by Local Government Board, 707, 708; who may appear and be heard at, 704, 708.
- regulations of Local Government Board as to proceedings under sect. 9 of Local Government Act, 1894, for, 1414.

CONDUCTOR of

- horses, donkeys, &c., let on hire, licensing of, and bye-laws as to, 236.
- omnibus, included in term driver, 1261.

CONFERENCES,

- attendance at, of members and officers of local authority, 476, 477.
- general order of Local Government Board as to, 1419.
- purchase of reports of, 476, 477.

INDEX.

CONFIRMATION of

- bye-laws by Local Government Board, 257, 259, 475; of bye-laws as to wires, &c., 568.
- order of county council for altering areas and boundaries, 518; for compulsory acquisition of lands for allotments, 707.
- provisional orders under Public Health Act, 1875...390.
- scheme under Part I. of Housing of Working Classes Act, 1890...604; under Part II. of that Act, 629.

CONFIRMING AUTHORITY UNDER HOUSING OF WORKING CLASSES ACT, 1890. *See also* SECRETARY OF STATE AND LOCAL GOVERNMENT BOARD.

- appeal to, by ratepayers on default of medical officer to make official representation, 610.
- appointment by, of arbitrator for settlement of compensation, 663, 671.
- costs of, under Part I., 670.
- deposit with, of map and plan of lands to be taken compulsorily, 663.
- dispensation by, of compliance with provision as to—accommodation to be provided for working class displaced, 607; service of notices, 617.
- local inquiries by, 653.
- order of, for sale of land acquired under scheme on failure of local authority to provide dwelling accommodation, 609.
- may prescribe forms of notices, &c., 617.
- who is, 604.

CONSECRATION

- of part of cemetery, 901.

CONSENT of. *See also* SANCTION.

- Attorney-General, to—proceedings for recovery of penalties, 336; proceedings for recovery of penalties from officers, 476; prosecutions under the Public Bodies (Corrupt Practices) Act, 1889...537.
- county council, to—appropriation of land, &c., for purposes of working-class lodging-houses, 643; sale or exchange of lands, &c. vested in authority for purposes of working-class lodging-houses, 644.
- justices to sale of land acquired for repair of highways, no longer required, 748.
- local authority to execution of work by authority of adjoining district, 382.
- Local Government Board, to—appropriation of land, &c. for purposes of working-class lodging-houses, 643; creation and issue of stock, 599; proceedings under Part III. of Rivers Pollution Prevention Act, 1876...1063; sale or exchange of lands, &c. vested in authority for purposes of working-class lodging-houses, 644.
- urban authority, to—building over sewer, 57; bringing forward of building beyond adjoining building, 531; construction of vault under carriage-way, 58; establishment of offensive trade, 131.

CONSERVATORS

- of the Rivers Lea and Thames, saving for, 1069.

CONSOLIDATION,

- Act, construction of, 1 *n*.
- of debts on creation of stock, 599.

CONSTABLE. *See* POLICE.

CONSTANT SUPPLY

- of water, local authority may provide, 82.

CONSTITUTION of

- new county boroughs, 516.
- joint board for united district, 380.

INDEX.

CONSTITUTION of—*continued.*

- local government district by provisional order, 372; by order in pursuance of resolution of owners and ratepayers, 373; objections to constitution, 375, 376; transfer of powers, &c. on constitution, 377.
- parochial committees, 273.
- port sanitary authority, 384, 480.
- special drainage district, 378, 379.
- united district, 380.
- new urban districts, 516, 517, 751.

CONSTRUCTION of

- bridge over canal, &c., 166.
- cemetery by local authority, 465.
- drain by local authority, on agreement with owner, 573; on default of owner, 54.
- market-house, 229.
- new streets, bye-laws as to, 204, 205.
- places of public resort, 587.
- reservoir, 80, 81.
- sewage disposal works, 58.
- sewage works without district, 61—63.
- sewers—by local authority, 36, 573; powers of local authority as to, 38; prohibition of, so as to pollute stream, 40; not to create nuisance, 50; in lieu of requiring drain to communicate with existing sewer, 54; precautions during, 223, 892, 893.
- streets, precautions during, 223, 892, 893.
- watervorks, by local authority, 76; restrictions on, 79; for gratuitous supply of water for public baths, 91.

CONSUMPTION

- of smoke from factories, &c., 108, 109.

CONTAGIOUS DISEASES (ANIMALS) ACTS,

- powers of council of borough with population under 10,000 to cease, 513.
- saving for, in Infectious Disease (Prevention) Act, 1890...559.
- text of Act of 1886...486—489.

CONTINUING OFFENCE,

- against bye-laws as to streets and buildings, what is, 217.
- bye-laws may impose penalties for, 257.

CONTRACTS,

- committees not to have power to make, 752.
- of county and district councils as to main roads, 493.
- disqualification of persons interested in, for office of urban or rural district councillor, 739; exceptions to disqualification, 742.
- of local authorities (generally)—provisions as to, 238—244; deposit of, for inspection prior to audit, and production of, to auditor, 326, 327; officers not to be concerned in, 265; when officers may be interested in, 481; protection from personal liability of persons under, 352.
- of local authority, with respect to—cleansing of earth-closets, privies, &c., 69—72; disposal of sewage, 58; lighting of streets, &c., 224; removal of house refuse, 69, 70; water supply, 77, 89.
- of rural authorities, 239 *n.*
- saving for existing, 773.
- of urban authorities—estimate and report of surveyor to be obtained before entering into, 238; sealing of, when required, 238; security for performance of, 238; tenders for, to be invited, 238.
- of water company to supply water, 89.

CONTRAVENTION

- of bye-laws as to new streets and buildings, removal of works executed in, 217.

INDEX.

CONTRIBUTIONS

- to common fund of joint board, 381, 387.
- to common fund of port sanitary authority, 386, 387.
- by county council, towards cost of—erecting bridges, &c., 1093; improvement and maintenance of highways, 495, 723; prosecutions under Rivers Pollution Prevention Act, 1876...500.
- to expenses of schemes under Part II. of Housing of Working Classes Act, 1890, in London, 637, 648.
- of local authority, to works under agreement for supply or distribution of sewage, 61.
- to rural authority's expenses—mode of raising, 310, 311, 729; orders for, *see* PRECEPTS; recovery of, on non-payment by overseers, 313.
- of urban authority towards—cost of private street works, 688; expenses of constructing bridge over canal, &c., 166; expenses of making new public roads, 165; support of public walks and pleasure grounds, 226, 591.

CONTRIBUTORY PLACE,

- not co-extensive with parish, who to be overseers of, 311.
- contributions from—to expenses of rural authority, mode of raising, 310—312; to expenses of joint board, 381.
- definition of, 309.
- highway expenses may be exceptionally charged to, 729.
- special drainage district, when constituted, to be, 379.
- special expenses to be separate charge on, 309.
- supply of water to, 76; expenses of, to be special, 308.
- works for common benefit of two or more, apportionment of costs of, 308, 309.

CONVENIENCES,

- sanitary. *See* SANITARY CONVENIENCES.

CONVERSION

- into dwelling-house, of building not intended for habitation, or of two dwelling-houses, 222.

CONVEYANCE,

- for infected persons, provision of, by authority, 143.
- public—definition of, 145 *n*; disinfection of, 146, 556; penalty for exposure in, of infected person, 144, 145.

CONVICTIONS,

- not to be quashed for want of form, nor to be removable into High Court, 350.
- by summary jurisdiction court, appeal to quarter sessions against, 363 *et seq*.

COPYHOLD

- lands, provisions of 8 Vict. c. 18, as to, 830.

CORONER

- in smaller quarter sessions boroughs, 511, 512.

CORPORATION,

- voting of, at meeting, and poll of owners and ratepayers, 433.

CORRUPT AND ILLEGAL PRACTICES,

- avoidance of election for extensive corruption, 1134; for extensive illegal practices, 1182.
- bribery, definition of, 1194.
- corrupt practices—definition of, 1177; punishment and incapacities for, 1177, 1178.
- corrupt practices by member or officer of public body, 535 *et seq*.
- disqualifications of electors for, 1185, 1186, 1197, 1198.
- at elections under Local Government Act, 1894...745.
- excuse and exception for, 1182—1185.
- illegal payments, employment, or hiring, what constitutes, 1179; punishment for, 1182.

INDEX.

CORRUPT AND ILLEGAL PRACTICES—*continued.*

- illegal practices—what are, 1178, 1179, 1184; punishment and incapacities for, 1179.
- personation, definition of, 1134, 1196, 1197.
- petition may be presented on ground of, 1186, 1187.
- prosecutions for, 1188—1190.
- provisions of Municipal Corporations Act, 1882, as to, 1133, 1134.
- treating and undue influence, definition of, 1196, 1197.
- vacation of office by person incapacitated by conviction for, 1191.

CORRUPTION

- in office, by member or officer of public body, 535 *et seq.*

COSTS. *See also* EXPENSES.

- of arbitrations, 252; of arbitration, under Part I. of Housing of Working Classes Act, 1890...670.
- of confirming authority in relation to improvement schemes, 605, 670.
- definition of term, in Local Government Act, 1888...528.
- of election petitions, 1135, 1140, 1190, 1191.
- of formation of united district, 379.
- legal business, taxation of bill of, 331.
- of local inquiries held by Local Government Board, 389, 525.
- of maintenance of patients in hospital, recovery of, 150.
- of meetings and polls of owners and ratepayers, 441.
- of owners, &c., in opposing improvement schemes, 605, 606.
- of proceedings for abatement of nuisance, 120, 125; when nuisance created by several persons, 338.
- of proceedings in relation to settlement of boundaries, 373.
- of promoting or opposing Provisional Orders, 393; of promoting or opposing private Bills, 1000—1002.
- recovery of, summarily, 333.
- of repair of highways in urban districts, 293.

COTTAGE,

- definition of, for purposes of Part III. of Housing of Working Classes Act, 1890...640.
- gardens, compensation for crops on, 1205, 1277.

COUNCIL OF BOROUGH,

- audit of accounts of, as urban authority, 325.
- bye-laws of, under Municipal Corporations Act, 1882...259, 1132, 1133.
- district council includes council of non-county borough, 718.
- expenses of, as urban authority, how to be defrayed, 276.
- proceedings of, as urban authority, 271.
- representation by, to Local Government Board as to alteration of borough boundary, 516.
- University representation on, 515.
- to be urban sanitary authority, 24.
- not being urban authority, provisional order dealing with, 515.

COUNTING

- of votes at poll of owners and ratepayers, 436.

COUNTY. *See also* ADMINISTRATIVE COUNTY.

- alteration of boundary of, 516, 734.
- authority for purposes of Allotments Acts in county borough, 509.
- of city or town, in what administrative county to be situate, 513.
- definition of, 526.
- entire, definition of, 526.
- rate, liability of quarter sessions borough to contribution for, 509, 512; appeal against, or basis of, by parish councils, 701.
- roads boards, and rates in South Wales, abolition of, 498, 499.
- rural sanitary district in more than one, each part to be rural district, 721.
- urban district in more than one, to be deemed in county containing larger population, 515.

INDEX.

COUNTY BOROUGH,

to be administrative county, 508.
 amalgamation of, 516.
 for purposes of Allotments Acts in, Local Government Board to be county authority, 509; application to, of provisions as to compulsory acquisition of lands for allotments, 709.
 without commission of assize and oyer and terminer, 508.
 constitution of new, 516.
 to continue part of county for non-administrative business, 508.
 council of. *See* COUNTY BOROUGH COUNCIL.
 jurors and jury lists in, where no separate commission of assize, &c., 508.
 main roads in, 509 *n*.
 union of, with county, 516.

COUNTY BOROUGH COUNCIL,

conferment upon, of power to appoint overseers or assistant overseers, or powers, &c. of overseers or parish councils, 730, 731; of powers of vestry under Poor Rate Assessment and Collection Act, 1869...732.
 grant by, towards cost of union officers, 506.
 joint committee of county council and, for alteration of areas in more counties than one, 735.
 transfer to, of county bridges and approaches, 508, 509; of certain powers of justices, 727, 730.

COUNTY BRIDGE,

adoption of bridge as, 1093.
 repair, &c. of, and of roads over, urban authority may undertake, 166.
 street does not include, 12.
 transfer of, to council of county borough, 508, 509.

COUNTY COUNCIL,

application by, for conferment of urban powers upon rural district council, 727.
 appointment by, of medical officer of health, 501.
 approval by, of bye-laws of quarter sessions borough as to locomotives, when required, 510.
 certificate of, as to adoption by rural authority of Part III. of Housing of Working Classes Act, 1890...641.
 consent of, to—appropriation by rural authority of land, &c. for working class lodging-houses, 643; sale or exchange of lands vested in rural authority for purposes of working class lodging-houses, 644.
 to consider Boundary Commissioners' reports, 735.
 may contract with district council to maintain, &c. main roads, 493, 495.
 contributions of, towards cost of—erecting bridges, &c., 1093; improvement or maintenance of highways, 495, 723; prosecutions under Rivers Pollution Prevention Act, 1876...500.
 delegation of powers by, to district council, 507, 759.
 determination by, of question as to custody or access to documents, 715.
 dispensation by, of prohibition as to voting of member of district council concerned in contract as shareholder of company, 742.
 district councils may be required by, to undertake maintenance of main roads, 493, 495; district council may act as agent of, 759.
 duty of, to bring Local Government Act, 1894, into operation, 771.
 expenses of—as to compulsory acquisition of lands by parish council or for allotments, 709; in executing powers of defaulting authority as to allotments, 1281; in executing powers of defaulting authority under Part II. of Housing of Working Classes Act, 1890...635; in executing powers of defaulting district council under Local Government Act, 1894...758; in respect of inquiries under Local Government Acts, 1888, 1894...763.
 grant by, towards cost of union officers, 506.
 joint committees of, for purposes of areas and boundaries, 735.
 loans of, for purposes of transferred powers of district council, 758.
 local inquiry by—as to alteration of area, &c., of county districts and parishes, 517, 1388; as to proposed compulsory purchase order, 704, 708.

INDEX.

COUNTY COUNCIL—*continued.*

main roads to be maintained, &c., by, 490.
notice to be given to, of order prohibiting supply of milk from dairy, 550.
orders of, generally—copy of, to be sent to Local Government Board and Board of Agriculture, when, 763; for altering areas, how notice of to be given and copies supplied, 518, 1390; for amending previous scheme or order, 520; under Local Government Act, 1888, matters which may be provided for in, 519, 520.
orders of—as to alteration of area or definition of boundaries of urban and rural districts and parishes, 516, 517; as to areas and boundaries, time for petitioning against, and validity of on confirmation, 736; as to alteration of area in which adoptive Act in force, 750; as to charities or custody of documents of parish divided by Local Government Act, 1894...734; for the compulsory acquisition of land by parish councils, and for allotments, 705—708; constituting isolation hospital district, 1341; limiting time for performance of duty by defaulting district council, 714; postponing transfer to rural district council of highway powers, 723; as to retirement of guardians, 717; as to retirement of urban district councillors, 720.
payment by, towards maintenance of main roads retained by urban authority, 492—494.
payments by, out of Exchequer contribution account of part of salary of medical officer of health and inspector of nuisances, 263, 264 *n*, 504, 505.
powers of, in case of inability of district council to act, 755, 756.
powers of, under Part II. of Housing of Working Classes Act, 1890...634, 635.
powers and duties of, under Local Government Act, 1894, as to areas and boundaries 733—736; as to removal of difficulties as to first elections, first meetings, &c., 767.
powers transferred to, under Local Government Act, 1888—general provisions as to, 506; summary proceedings for determining questions as to, 507.
provisional order of, for compulsory acquisition of land for allotments, 1217, 1218.
representation by, to Local Government Board, as to failure of district council to put Public Health Acts in force, 503; as to alteration of boundary of county, borough, or electoral division, 516.
Rivers Pollution Prevention Act, 1876, may be enforced by, 499.
saving for powers of, as to roadside waste, 726.
transfer to, of—administrative business of quarter sessions, 490 *n*; powers of district council as to rights of way and roadside waste, 720; powers of defaulting rural district council, 713; powers of district council, general provisions as to, 758; certain powers of smaller quarter sessions boroughs, 511; powers, &c., of sanitary authority as to allotments, 1280, 1281; property, &c., of county and district roads boards in South Wales, 499.
transfer to Local Government Board of powers, &c., of, as to areas and boundaries under Local Government Act, 1894...736.
vesting in, of main roads, 494.

COUNTY COURT,

proceedings in, for offences against Rivers Pollution Prevention Act, 1876... 1066, 1067.
recovery in, of demands under 50*l*....350.

COUNTY DISTRICT,

definition of, 527, 718.

COURT,

common, cleansing of, 581.
hoards to be set up during progress of building, &c., 585.
of Quarter Sessions. *See* QUARTER SESSIONS COURT.
street includes, 12.
of summary jurisdiction. *See* SUMMARY JURISDICTION COURT.
in unhealthy area, improvement scheme for, 601.

INDEX.

- COVENANTS**,
remedies for breach of, not to be prejudiced by proceedings under Part II. of
Housing of Working Classes Act, 1890...638.
- COVERED**
swimming bath, provision of, 1078; closing of, and conversion into gymnasium
during winter, 1078.
- COVERING**
for doors of cellars and vaults in streets, 891; in of sewers, 49, 50.
- COW KEEPERS**,
registration of, 487.
- COWS**,
dairy, inspection of, by medical officer of health, 550.
- COWSHEDS**,
circular of Local Government Board as to, where no regulation in force, 1428.
entry of, by local authority, 486.
expenses of local authority as to, 486.
local authorities for purposes of provision as to, who are, 486.
offences against orders and regulations as to, prosecution of, and penalties
for, 487.
Orders of 1885 and 1886 as to, text of, 1422, 1427.
transfer to Local Government Board of powers of Privy Council as to, 486.
- CREATION**
of stock by urban authority, 599.
- CRIMINALS**,
disqualification of, for office, 739.
- CROPS**,
on allotments and cottage gardens, compensation for, 1205, 1277.
- CROWN**
buildings, &c., exemption of, from Infectious Disease (Notification) Act,
1889...545.
- CUSTODY**
of parish books and documents, 715; of parish divided by Local Government
Act, 1894...734.
- CUSTOMS**
officers, execution by, of regulations of Local Government Board as to cholera,
&c., 534; examination by, of tea on importation, 1016.
- CUSTOMS AND EXCISE DUTIES**,
application of, 1278, 1279.
- CUSTOMS AND INLAND REVENUE ACTS**, 1890 and 1891,
exemption of artisans' dwellings from inhabited house duty, on certificate of
medical officer of health as to sanitary condition, &c., 1273.
reduction of inhabited house duty, 1272, 1273, 1287.
- CUTTING OFF**
of water supply, limitation of powers of company as to, 1203.
- DAILY PENALTY**,
on breach of bye-laws, power to impose, 257.
for carrying on offensive trade, 131.
definition of, 565.
for neglect to provide privy, &c. accommodation for factory, 66; to comply
with notice as to alteration of drains, privies, &c., 68.
for unauthorized building over sewer, or unauthorized vault or arch under
carriageway, 57, 58.

INDEX.

DAIRIES,

- circular of Local Government Board to sanitary authorities where no regulations in force as to, 1428.
- definition of, 549.
- entry of, by local authority, 486.
- expenses of local authority as to, 486.
- inspection of, by medical officer of health, 550.
- local authorities for purposes of provisions as to, who are, 486.
- offences against orders and regulations as to, prosecution of, and penalties for, 487.
- Orders of 1885 and 1886 as to, 1422, 1427.
- prohibiting supply of milk from, 550.
- transfer to Local Government Board of powers of Privy Council as to, 486.

DAIRIES, COWSHEDS, AND MILKSHOPS ORDER, 1885,

- to be deemed to have been made by Local Government Board, 487.
- regulations under, by county authority, to be deemed regulations of local authorities in county, 487.
- text of, 1422.

DAIRIES, COWSHEDS, AND MILKSHOPS ORDER, 1886,

- text of, 1427.

DAIRYMEN,

- definition of, 549.
- not liable to action for breach of contract in consequence of order of local authority, 551.
- prohibition of supply of milk by, 550.
- registration of, 487.
- summoning of, to attend before local authority, 550.

DAM,

- purchase of, by local authority, 244.

DAMAGE,

- caused by setting back or forward of building, compensation for, 201.
- by local authority, compensation to be made for, 402.
- of notice-boards, &c., penalty for, 401.
- to works or property of local authority, penalty for, 402.

DAMAGES,

- recovery of—by companies, 805, 807; under Railways Clauses Consolidation Act, 1845...843—845; under Gas Works Clauses Act, 1847...870.

DANCING LICENCES. *See* MUSIC AND DANCING LICENCES.

DANGEROUS

- buildings, 223, 891, 892.
- telegraph, &c. wire, 569.

DATE

- for making up accounts of local authority, 325, 754.

DAY,

- definition of, for entry into tent or van, 484.

DEAD,

- dying of infectious disease—prohibition of retention of body of, 554; body of, to be removed from hospital for burial only, 555; burial of body of, by order of justices, 555.
- regulations as to interment of, when epidemic disease prevalent, 151.

INDEX.

- DEBENTURES**,
under Local Loans Act, 1875...1018.
- DEBTS.** *See also* **LIABILITIES**.
consolidation of, on creation of stock, 599.
- DECLARATION**,
arbitrator or umpire to make, 252.
as to correctness of accounts, auditor may require, 327, 789.
that highway unnecessary for public use, 709, 710, 1095.
of private street to be highway, 198, 589, 689, 690.
- DEDUCTION** from
general district rate in respect of sewers, when premises drained, 301, 302.
rent, of expenses recovered from occupier in lieu of owner, 125; of proportion of private improvement rate, 292; of proportion of rent-charge in respect of private improvement expenses, 322.
- DEED POLL**,
execution of, by promoters of undertaking, 823, 824.
- DEEDS**,
deposit of, for inspection prior to audit, 326, 327.
of parish, custody of, 715.
production of, to auditor, 327.
- DEFACEMENT** of
notice-boards, &c., penalty for, 401.
placards, notices, &c., 592.
- DEFAULT** of
district council as to protection of rights of way, or roadside waste, 726.
local authority, enforcement by Local Government Board of duty, in case of, 394—397. *See also* **DEFAULTING LOCAL AUTHORITY**.
local authority, as to nuisances, 127.
owner or occupier, to comply with notice as to—cleansing and disinfecting of premises, 141; drainage of houses, 54; private street works, 176; providing privy or ashpit, 64, 66; purification of houses, 73; supply of water to house, 88; to house in rural district, 458; works for removal of nuisances by drains, privies, &c., 68.
owner or occupier, to comply with order as to polluted well, 96.
rural district council—complaint of parish council as to, 713; powers of county council on receipt of complaint, 713, 714, 758; as to supply of water, 460.
- DEFAULTERS**,
in payment of rates, list of, 269; proceedings against, 339.
- DEFAULTING LOCAL AUTHORITY**,
appointment, &c., of person to perform duty of, 394, 714.
complaint to Local Government Board, as to, 394; memorial of owner against requirement of rural authority as to provision of water supply to be deemed complaint of, when, 460.
complaint of parish council to county council, as to, 713.
expenses of performing duty of, 394, 758; recovery of expenses, 395; loan for purposes of defraying expenses of, 396, 758; certificate of Local Government Board as to expenses, 396; definition of "expenses," 397.
order limiting time for performance of duty by—making of, by Local Government Board, 394; making of, by county council, as to rural district council in default, 714.
transfer to county council of powers of, 713; general provisions as to, 758.
- DEFAULTING OFFICERS**,
summary proceedings against, 269, 270.

INDEX.

DEFINITIONS,

- N.B.—The definitions in the Acts set out in the Appendix are not included in the following list, but reference to the page where those definitions will be found is given in this Index under each Act where the Act extends over many pages—
- administrative county, 526.
 - advantage, 538.
 - affairs of church, 765.
 - appointed day, 529, 771.
 - ashpit, 564.
 - assizes, 528.
 - Bakehouse Regulations Act, 21.
 - Bank of England, 527.
 - Baths and Washhouses Acts, 21.
 - borough, 3, 526.
 - building, 17 *n*.
 - closing order, 618.
 - common lodging-house, 99 *n*, 100 *n*, 105.
 - contributory place, 309.
 - cottage, 640.
 - county and entire county, 526.
 - county district, 527, 718.
 - court of quarter sessions, 22.
 - court of summary jurisdiction, 22.
 - daily penalty, 565.
 - dairy, 549.
 - dairymen, 549.
 - day, 484.
 - district, 655.
 - district council, 527, 718.
 - division of a county, 526.
 - drain, 18.
 - duties, 528.
 - dwelling-house, 617.
 - earth-closet, 65.
 - ecclesiastical charity, 765.
 - elementary school, 766.
 - existing, 527.
 - expenses, 397, 528.
 - full net value, 11.
 - general expenses, 308.
 - guardians, 5, 527.
 - hackney carriage, 916.
 - highway area, 527.
 - highway authority, 527.
 - house, 15.
 - Improvement Act commissioners, 4.
 - Improvement Act district, 4.
 - infectious disease, 542.
 - Labouring Class Lodging-houses Acts, 21.
 - lands, 6, 656.
 - liabilities, 528.
 - licensing district and justices, 599.
 - local authority, 6, 545, 655.
 - local board, 4.
 - Local Government Acts, 4 *n*, 21 *n*.
 - local government district, 4.
 - local and personal act, 766.
 - local rate, 655.
 - main road, 529.
 - medical officer of health, 549.
 - metropolis, 3, 526.
 - metropolitan police district, 3 *n*.
 - new building, 222.
 - nuisances liable to be dealt with summarily, 108 *et seq*.
 - occupation of cellar dwelling, 99.
 - occupier, 545.
 - omnibus, 1260.
 - owner, 6—11.
 - owner, for purposes of meetings and polls of owners and ratepayers, 430.
 - owner, under Part II. of Housing of Working Classes Act, 1890...619.
 - parish, 4, 526, 764.
 - parliamentary county, 526.
 - parliamentary election, 526.
 - parliamentary voters, 527.
 - parochial charity, 765.
 - pension, 528.
 - person, 6, 527.
 - place of public resort, 587.
 - police district, 599.
 - poor law union, 527.
 - port sanitary district, 545.
 - powers, 528.
 - premises, 6.
 - property, 528.
 - public body, 538.
 - Public Health Acts, 531.
 - public office, 538.
 - quarter sessions, 526.
 - quarter sessions borough, 526.
 - rack rent, 11.
 - rateable value, 765.
 - rural authority, 527.
 - rural district, 545.
 - Sanitary Acts, 21.
 - sanitary convenience, 565.
 - sanitary purposes, 22.
 - sanitary work, 470.
 - secretary of state, 527.
 - sewer, 18.
 - slaughter-house, 20.
 - special expenses, 308.
 - street, 12, 617, 681.
 - Summary Jurisdiction Acts, 23.
 - superior court, 656.
 - support, 470.
 - surveyor, 6.
 - treasury, 527.
 - trustees, 765.
 - union, 5.
 - urban authority, 527.
 - urban district, 545.
 - urban sanitary authority, 24, 25.
 - urban sanitary district, 24, 25.
 - vestry, 765.
 - water company, 20.
 - waterworks, 21.
 - working class lodging-house, 640.
 - written, 526.

INDEX.

DEFINITIONS,

in Local Government Act, 1888, to apply to Local Government Act, 1894...
764.

DELEGATION to

committee of rural authority of powers and duties, 273.
constituent authority of powers, &c., by joint board, 380.
district council of powers by county council, 507, 759.
parish council of powers which might have been conferred on parochial committee, 713.
parochial committee of powers, &c., 273.
riparian authority of powers by port sanitary authority, 386.

DEMOLITION of

dwelling-house unfit for human habitation—order of local authority for, 620, 621; powers of county council as to, 634, 635; scheme dealing with site of house, 627 *et seq.*
obstructive buildings, 625—627; powers of county councils as to, 634, 635; scheme dealing with site of building, 627 *et seq.*
unhealthy houses, scheme for, 627 *et seq.*

DEPOSIT of

accounts for inspection prior to audit, 326, 327.
bye-laws for inspection before confirmation, 257.
bye-laws of rural authority with overseers, 258.
papers relating to poll of owners and ratepayers, 436.
plan of undertaking for which lands required compulsorily, 246; plans in parliamentary offices under standing orders, 284 *n*, 1518—1525.
plans of new streets and buildings may be required by bye-laws, 205; approval to be signified within a month of deposit, 217.
plans, sections and estimate of cost of private street works, 176.
statement as to proposed general district rate, 279.
sum certified by arbitrator, entry on lands included in improvement scheme on, 668.

DEPUTY

medical officer of health—appointment and remuneration of, 260, 263, 501, 616; duties of medical officer under Housing of Working Classes Act, 1890, may be performed by, 651.

DESCRIPTION

of owner or occupier—in notices, orders, &c., 359; in proceedings against nuisances, 338; in proceedings under Part II. of Housing of Working Classes Act, 1890...639; in rates, 300.

DESTRUCTION of

infected clothing, bedding, &c., 142.
placards, notices, &c., 592.
unsound meat, &c., 138.

DESTRUCTIVE INSECTS ACTS,

powers under, of council of borough with population under 10,000 to cease, 513.

DETENTION

in hospital of infected person, without proper lodging, 556.

DIFFERENCE. *See also* DISPUTE.

arising out of transfer of powers and property, settlement of, 398.
between water company and local authority, settlement of, 79.
as to water consumed by meter, 86.

DIFFICULTIES

under Local Government Act, 1894, removal of, 767.

INDEX.

DIMINUTION of,
local government district, 371.
urban district, 516, 517, 751.

DISABILITY,
sale by persons under, 810.

DISALLOWANCE by
auditor in accounts of local authority, 327, 328; remission of, by Local Government Board, 923; removal of, into Court of Queen's Bench, 798.
Local Government Board, of—bye-laws, 257; construction of reservoir, 80, 81; order of county council altering boundaries, 518; order of county council for compulsory acquisition of land for allotments, 707; sewage works without district, 63.

DISCHARGE of
loans under Local Loans Act, 1875...1021, 1201.
sewage into streams, purification required before, 40.

DISCONTINUANCE of
highway for public use, 709, 710, 1095.
sewers, 49.

DISINFECTING,
apparatus, provision of, 143.
of bedding, &c., 553.
expenses of rural authority as to, to be general expenses, 308.
house, penalty for letting without, 146.
of infected house and articles, 551, 552; penalty for ceasing to occupy house without, 554; temporary shelter may be provided for persons removed for purposes of, 557.
of premises, 141.
of public conveyance used by infected person, 146; cost of disinfecting, may be required to be prepaid by user of conveyance, 146; of public conveyance used for carrying infected corpse, 556.
regulations as to epidemic diseases may provide for promotion of, 151.
of rubbish thrown into ashpit, 557.
of ship, 479 *n*.

DISPENSATION,
by confirming authority of provision of accommodation for working classes displaced by improvement scheme, 607; of requirement as to notices, &c., in certain cases, 617.

DISPOSAL,
of sewage—powers for, 58; dealing with lands appropriated for, 60, 61; sanitary authorities not to be required to receive into sewers liquids interfering with, 1064.

DISPUTE as to. *See also* DIFFERENCE.
boundaries of urban district, settlement of, 379.
charges of medical practitioner for attendance on board ship, 153.
communication of sewers and drains without district with sewer within, 53.
communication of sewers with sewers of adjoining district, 60.
compensation for damage by local authority, 402.
loss or damage caused by setting back building, 201.

DISQUALIFICATION,
of electors, for corrupt and illegal practices, 1185, 1186, 1197, 1198.
of justice to act when interested, 346—348.
for office of parish or district councillor or guardian, 739—744; penalties for acting or voting when disqualified, 744.
of tenant of working class lodging-house on receiving relief, 644.
of women, as parochial electors, removal of, 737.

INDEX.

DISSOLUTION of

- Improvement Act district within borough, 371.
- local government district, 371.
- main sewerage districts under Public Health Act, 1848, and of joint sewerage boards under Sewage Utilization Act, 1867...412.
- special drainage district, 371.

DISTRESS

- for payment of rates, 339.

DISTRICT,

- adjoining—communication of sewers with sewers of, 60; supply of water to authority of, 87; execution of works in, 382.
- communication of sewers and drains without with sewer within, 53.
- definition of, in Housing of Working Classes Act, 1890...655.
- division of, into rating areas, 284.
- drainage of, duty of local authority as to, 36.
- inspection of, for detection of nuisances, 115.
- lighting of, by urban authority, 224.
- nuisance arising from cause without, 128; from offensive trade without, 135, 136.
- sewage works without—powers of local authority as to, 38, 58; provisions as to, 61—63; provisions as to, to apply to cemetery without district, 465.
- sewerage system of, map of, 51.
- supply of water to, 76.

DISTRICT AUDITORS ACT, 1879,

- text of, 1101—1103. *See also* AUDITOR.

DISTRICT COUNCIL,

- chairman of, to be elected at annual meeting, 427; absence of chairman of, chairman to be chosen at meeting, 427; casting vote of, 428; to be *ex officio* justice of peace, 718.
- contracts of, with county council as to main roads, 493.
- definition of, 527, 718.
- delegation by county council of powers to, 507.
- failure of—to put Public Health Acts in force, representation by county council to Local Government Board, as to, 503; to protect right of way or roadside waste, transfer of powers to county council, 726, 758.
- maintenance, &c. of main roads by, 493, 495.
- meetings of, rules as to, 426 *et seq.* *See also* MEETINGS OF NON-BOROUGH DISTRICT COUNCILS.
- number of members of, alteration of, 517.
- petition of, to Local Government Board against refusal of county council to make compulsory purchase order as to allotments, 705.
- proceedings of—minutes of, evidence of, 428; rules as to, 426 *et seq.*; validity of, notwithstanding vacancies, &c., 428.

DISTRICT FUND,

- account, treasurer to keep, 278.
- deficiency in, to be met by general district rate, 278.
- establishment of, 278.
- mortgage of, as security for loans, 314.
- payment out of—of expenses of urban authority, 276, 278; of cost of repair of highways, 293.

DISTRICT ROADS BOARDS,

- abolition of, in South Wales, 499.

DISTRICTS,

- union of, 379 (*see also* UNITED DISTRICTS); for appointment of medical officer of health, 382, 383.

[37]

INDEX.

- DISUSED BURIAL GROUNDS ACT, 1884.** *See also* BURIAL GROUND, DISUSED.
definition for purposes of, of burial ground, 1111, 1213; of disused burial ground and building, 1213.
text of, 1199.
- DITCH,**
cleansing of offensive, 75.
nuisance from, 109.
- DIVERSION**
of highway, 709, 710.
- DIVISION of**
local government district into wards, on constitution, 372.
parishes into wards for election of guardians or rural district councillors, 756, 757.
urban districts into rating districts, 284; into wards for election of councillors, 517.
- DOCK,**
company, powers of, and loans to, for purposes of working class lodging-houses, 646, 647.
reference to arbitration as to certain works affecting, 417, 418.
saving for bridges over, 415.
saving for navigation of, and supply of water to, 415.
substitution of new, for existing sewers under, 419.
works not to be executed under or through, without consent, 415.
- DOCUMENTS,**
authentication of, 358.
of parish, custody of, 715, 734.
production of, to arbitrator or umpire, 252; to auditor, 327.
service of, mode of, 359.
- DONATION**
of land for cemetery, 465.
- DONKEYS,**
bye-laws as to, 236.
licensing of proprietors, drivers, &c., of, 236.
stands for, fixing of, 236.
- DOORS**
opening outwards on to street, 890, 891.
- DRAINAGE,**
of buildings, bye-laws as to, 204, 205; may apply to existing as well as new buildings, 578, 579.
of cellar dwellings, 98.
of district, duty of local authority as to, 36.
of houses—power to enforce, 54; into cesspools, when local authority may require, 54; into new sewers, 56.
of lodging-houses, bye-laws as to, 106.
works, support of, over mines, 470, 471.
- DRAINS,**
communication of, with sewer, 51—53, 421, 572; with new sewer, 56; with cesspools, 54, 57.
construction of, by local authority on agreement with owner, 573.
definition of, 18.
entry on lands for purpose of ascertaining course of, 400.
examination of, on complaint of nuisance, 68, 573.
fall of, local authority may prescribe, 54, 57.
of houses belonging to different owners, examination of, on complaint of nuisance, 573.
houses not to be built, rebuilt, or occupied without, 57.

INDEX.

DRAINS—*continued.*

- of main roads, vesting of, in county council, 494.
- material of, local authority may prescribe, 54, 57.
- nuisance not to be created by, 68, 573; nuisance from, may be dealt with summarily, 108.
- size of, local authority may prescribe, 54, 57.
- without district, communication of, with sewer within district, 53, 421.

DRIVERS of

- hackney carriages, bye-laws as to, 922; licensing of, 918, 919; duration of license of, 235.
- horses, donkeys, &c., bye-laws as to, 236; licensing of, 236.
- omnibus, provisions as to driver of hackney carriages to apply to, 1261.
- public conveyance, penalty on, for failure to disinfect carriage, 146.

DRUGS,

- adulteration of, 1007. *See also* SALE OF FOOD AND DRUGS ACTS.

DUES,

- annual return as to, 929, 1077.

DUST,

- bye-laws for preventing nuisance from, 72.
- receptacles for, provision of, by urban authority, 73.

DUTIES,

- definition of term in Local Government Act, 1888...528.
- of inspector of nuisances, when salary repaid by county council may be prescribed by Local Government Board, 263.
- of medical officer of health, Local Government Board may prescribe, 263, 505.
- of officers and servants of urban authority, regulations as to, 260.
- of rural sanitary authorities, 30.
- of urban sanitary authorities, 28.

DUTY,

- enforcement of performance of, by defaulting local authority, 394, 714.
- of local authority to enforce law, 483.

DWELLING,

- rooms over privy, &c. not to be used as, 580.

DWELLING-HOUSE,

- conversion into, of building not constructed for human habitation, or of one dwelling-house into two, to be deemed erecting new building, 222.
- definition of, 617.
- improvement fund under Part I. of Housing of Working Classes Act, 1890... 614, 615.
- in rural district—to have available supply of water, 457; not to be occupied until certified to have sufficient supply of water, 461.
- stagnant water in, penalty for, 74.
- swine keeping in, penalty for, 74.
- unfit for human habitation—complaint by householders as to, 618, 619; copy of complaint to be sent to county council, when, 634; complaint by parish council, as to, 701; order of local authority for demolition of, 620, 621; order of local authority for execution of works to render, fit for habitation, 621; grant of charge to owner by way of annuity on completion of works, 622—624; proceedings for closing of, 619, 620, 673, 674; owner of, when not in receipt of rents and profits, may require notice of proceedings to be given to owner in receipt, 637; owner of, may obtain order authorising him to execute works where owner proceeded against makes default, 638; powers of county council, as to, 634, 635; representation by medical officer, as to, 618.
- use as, of building not erected as, prohibition of, 222 *n*, 584, 585.
- for working classes. *See* WORKING CLASSES.
- yards of new, bye-laws as to, 205 *n*, 578.

INDEX.

EARTH-CLOSET. *See also* SANITARY CONVENIENCES.

- alteration of, 68.
- bye-laws as to, 204, 205, 578.
- cleansing of, 69—72.
- common to two houses, 64.
- definition of, 65.
- deodorising substance may be provided for, 65.
- examination of, on complaint of nuisance, 68.
- nuisance not to be created by, 68.
- penalty for building house without, 64.
- provision of—may be enforced, 63, 64; to be deemed provision of water-closet, 65; for factories, enforcement of, 65, 66.
- public, provision of, by urban authority, 66, 67.

EASEMENTS,

- over lands acquired under improvement or reconstruction schemes, extinction of, 614, 629.
- terms lands and premises include, 6.

ECCLESIASTICAL CHARITY,

- definition of, 765.

EDUCATION

- of children on canal boats, 1074, 1201.

EFFLUVIA

- from offensive trade, 134.

EGRESS

- from places of public resort, 586, 587.

ELECTION of. *See also* ELECTIONS REGULATED BY RULES, ETC.

- allotment managers, 1221, 1222.
- chairman of non-borough district council, 427, 725.
- guardians, to be in accordance with rules, 717; union or division of parishes for purposes of, 756, 757.
- improvement commissioners, in certain cases, 409.
- local boards, 26.
- member of joint board, 380.
- rural district councillors, 721; areas for, 721; union or division of parishes for purposes of, 756, 757.
- term, includes nomination and poll, 765.
- urban district councillors to be in accordance with rules, 720.

ELECTION PETITION,

- abatement of, 1139.
- costs of, 1140, 1190, 1191.
- court for trial of—constitution of, 1136; expenses of, 1142; reception of, and attendance at, 1141.
- election in room of person unseated on, 1142.
- grounds for, 1134, 1186.
- at issue, when, 1136.
- list of, 1136.
- presentation of, 1135.
- rules of procedure and jurisdiction, power to make, 1141; text of rules, 1143—1150.
- security for costs, 1135.
- substitution of petitioners, 1139.
- substitution of respondents, 1140.
- trial of, 1137; attendance at trial of public prosecutor, 1188; witnesses at trial, 1135.
- validity of acts done pending, 1142.
- withdrawal of, 1139, 1140, 1187.

INDEX.

ELECTIONS REGULATED BY RULES UNDER LOCAL GOVERNMENT

ACT, 1894,
application to, of Ballot Act, 1872, Municipal Corporations Act, 1882, and
Municipal Elections (Corrupt and Illegal Practices) Act, 1884...745.
ballot boxes, use of, for purposes of, 747.
corrupt and illegal practices at, 745.
difficulties as to individuals, county council may order new election in case of,
747.
expenses of, 746; scale of, 747.
maximum expenses of candidates at, 745.
nominations at, 744; relation of nomination to election, 746.
poll at, to be by ballot, 745; days and hours of, 744; to be taken together in
certain cases, 744.
returning officer at, 744; use by, of schoolrooms, &c., 745.
rules of Local Government Board as to, what to be provided for in, 744; text
of rules as to rural district councillors, 1465—1491; text of rules as to
urban district councillors, 1439—1465.
voting at, elector not to vote in more than one parish or ward, 744.

ELECTORAL DIVISION

of county, alteration of, 516.

ELECTORS,

disqualification of, for corrupt and illegal practices, 1185, 1186, 1197, 1198.
of guardians, who to be, 716; votes of, 717.
person twice convicted of corruption in office not entitled to be, 536.
of urban district councillors, who to be, 720; votes of, 720.

ELECTRIC LIGHTING ACTS,

accounts under, 1161.
arbitration under, 1166.
charges for electricity, 1164.
compensation for damage under, 1163.
definitions in, 1166, 1167.
expenses of local authority under, 1161.
gas undertakers may be relieved of obligation to supply gas in certain cases,
1166.
general powers of undertakers under licence or provisional order, 1161.
incorporation with, of certain provisions of Clauses Consolidation Acts, 1162.
licences authorising supply of electricity under, 1158.
loans of local authorities under, 1161.
local authorities may contract for work in certain cases, 1162.
obligation to supply electricity, 1164.
pipes and wires, altering position of, 1163.
protection under—of canals, 1163; of mines, 1167; of Postmaster-General,
1165, 1167.
provisional orders under, 1159, 1160; consent of local authority required to,
1228.
purchase of undertaking by local authority, 1229, 1230.
regulations and conditions to be inserted in licence or provisional order, 1160.
regulations of Board of Trade as to protection of safety, &c., 1231—1234.
restrictions—as to above ground works, 1163; as to assignment of powers of
undertakers, 1162; on breaking up private streets, &c., 1162; as to
placing electric lines, 1230.
rules of Board of Trade in relation to applications, &c. under, 1160; text of
rules, 1170—1173.
saving for works under, from bye-laws as to wires, &c., 570.
special form of lamp or burner not to be prescribed, 1164.
text of Act of 1882...1158—1169; of Act of 1888...1228—1234.

ELEMENTARY SCHOOL,

definition of, 766.

INDEX.

EMIGRANT RUNNERS,

licensing of, 1348; by district council, 727; by county borough council, 730;
form of licence, 1353.

EMOLUMENTS,

compensation to officers for loss of, 408.

EMPLOYMENT

at elections, what constitutes illegal, 1179; punishment for, 1182.

EMPTY

premises, rating of, to general district rate, 283.

ENCROACHMENTS on

commons, jurisdiction of county courts as to, 1056.
roadside waste, 490, 725.
village greens, 1056.

ENCUMBRANCES,

lands charged with, provisions of 8 Vict. c. 18, as to, 835.

ENDEMIC AND EPIDEMIC DISEASES. *See also* INFECTIOUS DISEASE.

combination of local authorities for purposes of, 153.

definition of, 151 *n*.

memorandum of Local Government Board as to precautions against, 1431.

regulations as to—borrowing power of local authority for purposes of, 473;
execution of, by local authority, 152; Local Government Board may
make, 147, 151; penalty for violating or obstructing, 153; publication of,
152.

ENFORCEMENT of

judgment recovered against local authority, 356 *n*.

the law, duty of local authority as to, 483.

performance of duty by defaulting local authority, 394, 714.

ENTRY,

on canal boat, 1074.

of dairy, cow-shed, or milk-shop, 486.

on lands—for purposes of Public Health Act, 1875, general powers as to, 400;
included in improvement scheme on making deposit, 668; provisions of
8 & 9 Vict. c. 18, as to, 827—829.

of place of public resort for purposes of provisions as to ingress and egress, 587.

upon premises—to abate nuisance, 122, 124; authorised to be acquired com-
pulsorily under Housing of Working Classes Act, 1890...651; to examine
drains, privies, &c. on complaint of nuisance, 68; to examine as to
nuisances, 124; to examine meat, &c., 136, 140; to examine whether
chemical refuse, &c. turned into sewers, 571, 572; for execution of regu-
lations as to epidemic diseases, 152; to inspect water supply in rural
district, 462; for purposes of Infectious Diseases (Prevention) Act, 1890...
557.

upon ship, for executing regulations as to epidemic diseases, 152.

of tents and vans, 484.

EPIDEMIC

diseases. *See* ENDEMIC AND EPIDEMIC DISEASES.

EPIDEMIC AND OTHER DISEASES (PREVENTION) ACT, 1883,

text of, 473, 474.

ERECTION of

new buildings, bye-laws as to, 204, 205, 578.

hospital by local authority, 148.

INDEX.

ESTABLISHMENT

- expenses of rural authority to be general expenses, 308.
- of market, 232, 233.
- of offensive trade, consent required to, 131.

ESTIMATE,

- of cost of private street works, 176, 682, 685, 686, 692.
- improvement scheme to be accompanied by, 602.
- of surveyor to be obtained before entering into contract, 236.
- of urban rates to be prepared, 296.

EVIDENCE,

- of bye-laws, 258, 1133.
- of certified copy of entry in register of common lodging-houses, 99.
- false, punishment of, 351.
- as to family, in proceedings as to common lodging-houses, 105.
- of making of regulations as to epidemic diseases, 147, 152.
- of minutes of proceedings of district council, 428.
- of provisional order, 391.
- register of water meter to be, 86.
- of urban rates, 301.

EXAMINATION of

- drains, privies, &c. on complaint of nuisance, 68.
- premises for nuisances, 124; to ascertain whether chemical refuse, &c. turned into sewers, 571, 572.
- meat, &c., 136, 140.

EXAMINER,

- gas, appointment of, 977.

EXCHANGE

- of lands by local authority, 244.

EXCHEQUER,

- contribution account—what it is, 504 *n*; payment out of, of part of salary of inspectors of nuisances and medical officers of health, 504, 505.
- repeal of enactments requiring local grants out of, 503.

EXECUTION,

- by local authority of—drainage works on default of owner or occupier, 54; private street works on default of owner or occupier, 176; regulations as to epidemic diseases, 152; works in adjoining district, 382; works, combinations for, 382; works for alteration, &c. of drains, privies, &c., 68; works for supply of water to house on default of owner, 88.
- by rural authority, of works of water supply on default of owner, 458.

EXEMPTION,

- from bye-laws as to wires, &c. of particular apparatus, 569; danger from apparatus so exempted, 569.
- from general district rate, of properties exempt from similar rate under local Act, 283.
- of incumbent of church, &c., from cost of private street works, 197, 688.
- of railway buildings, from bye-laws as to new streets and buildings, and provisions as to building line, 205.
- of railways and canals abutting on street, from private street expenses in certain cases, 690.
- from rating of certain properties, 284 *n*.

EXHAUSTED

- parish lands, sale of, 749 *n*.

EXISTING,

- contracts, debts, bye-laws, &c., saving for, 773.
- definition of term, 527.
- officers, provisions as to, in Local Government Act, 1894...768, 769.

[43]

INDEX.

EX-OFFICIO

- guardians, abolition of, 28 *n*, 715.
- justice, chairman of district council to be, 718.
- members of urban authorities, abolition of, 719.

EXPENSES,

- of abatement of certain nuisances, 74.
- of alteration of situation of gas and water pipes in streets, 200.
- of attending conferences, 476, 477.
- of burial by relieving officer of body removed to mortuary, 154.
- of candidates at elections under Local Government Act, 1894...745.
- of cleansing common courts and passages, 581.
- of constructing bridge over canal, contribution of urban authority to, 166.
- of county council—as to compulsory acquisition of land by parish council or for allotments, 709; in executing powers of defaulting authority under Part II. of Housing of Working Classes Act, 1890...635; in executing powers of defaulting authority as to allotments, 1281; in executing powers of defaulting district council under Local Government Act, 1894...758; in respect of inquiries under Local Government Acts, 1888 and 1894...763.
- definition of term in Local Government Act, 1888...528.
- division of, between landlord and tenant in certain cases, 411.
- of elections under Local Government Act, 1894...746; scale of, 747.
- under Electric Lighting Acts of local authorities, 1161.
- of executing—Allotments Act, 1887...1223; Baths and Washhouses Acts, 849; Canal Boats Acts, 1075; Houses of Working Classes Act, 1890, Part I., 614; Part II., 633; Part III., 642, 645; Infant Life Protection Act, 1872...996; Infectious Diseases (Notification) Act, 1889...543; Infectious Disease (Prevention) Act, 1890...538; Museums and Gymnasiums Act, 1891...1286; Open Spaces Acts, 1214; Private Street Works Act, 1892...691; Public Health Acts Amendment Act, 1890...562, 593; Public Libraries Act, 1890...1325; Sale of Food and Drugs Acts, 1016.
- of executing order as to abatement of nuisance, 122; as to polluted well, 97.
- of executing provisions as to dairies, cow-sheds, and milk-shops, 486; as to nuisances, 125.
- of executing works—of drainage on default of owner or occupier, 54; in connection with drainage into new sewers, 56; for removal of nuisance created by drain, privy, &c., 68; of water supply to house, on default of owner, 88; of water supply to house in rural district, 458, 460.
- highway, in urban districts, 293; in rural districts, 729.
- of joint boards, 381.
- of joint committees of parish and district councils, 753; of joint committees for purposes of Rivers Pollution Prevention Act, 1876...500.
- of local authority, when sanctioned by Local Government Board, not to be disallowed, 1228.
- of new roads, contribution of urban authority to, 165.
- for which owners liable, recovery of, 341, 342; to be charge on premises, 341, 342.
- of parochial committees, 273.
- of performance of duty of defaulting authorities, 394—397, 758.
- of port sanitary authorities, 384, 386.
- of private street works—apportionment of, 176, 682, 686, 687; exemption of churches, &c., from, 197, 688; recovery of, 176, 687, 688.
- of prosecutions under Public Bodies (Corrupt Practices) Act, 538.
- of providing privy, water-closet, or ashpit, on default of owner, &c., 64.
- of pulling down or removing works contrary to bye-laws, 217.
- of purifying house, on default of owner, &c., 73.
- recoverable summarily, appeal to Local Government Board against decision of local authority as to, 359.
- recovery of, by local authority summarily, 333.
- of removal by urban authority of accumulations of filth, 75.
- of rural authority, divided into general and special, 308. *See* GENERAL EXPENSES and SPECIAL EXPENSES.

INDEX.

EXPENSES—*continued.*

of rural district councils, how to be defrayed, 728, 729.
under Tramways Act, 1870, of local authority, 952, 953.
of urban authority, mode of defraying, 276—278; in execution of additional powers conferred by Local Government Act, 1894...728.
of works for common benefit of two or more contributory places, 308; of works under Towns Improvement Clauses Acts, 223.

EXPLOSIVES,

transfer to county council of powers, &c., of smaller quarter sessions boroughs as to, 511.

EXPOSURE of

infected person or article, penalty for, 144, 145.
person indecently, penalty for, 913.

EXTENSION of

local government district, 371.
urban districts, 516, 517, 751.

EXTINCTION

of rights of way and other easements over lands acquired under improvement or reconstruction schemes, 614, 629.

EXTRAORDINARY

traffic on highways, recovery of expenses of, 1094.

FACTORIES (STEAM WHISTLES) ACT, 1872,

text of, 998.

FACTORY,

ashpit for, provision of, may be enforced, 65, 66.
draining of, into sewers, facilities to be afforded for, 1064.
house includes, 15.
nuisances in, 108.
privy or water-closet in, enforcement of provision of, 65, 66.

FACTORY AND WORKSHOP ACTS,

accidents, provisions as to, 1357, 1358.
application of Acts to laundries, 1358.
arbitration under, rules as to, 1313.
dangerous factory or workshop, power to make order as to, 1355.
definitions in, 1087, 1176, 1312.
employment of persons in places injurious to health, penalty for, 1255.
enforcement by sanitary authority of sanitary provisions as to workshops, 1307.
fines under, 1084, 1311.
legal proceedings under, 1086, 1087, 1312.
lists of outworkers to be open to inspection by officer of sanitary authority, 1311, 1362.
notice of opening of workshop to be given to sanitary authority, 1311; notice of existing workshops to be given to sanitary authority, 1362.
overcrowding of factory or workshop, 1354.
provisions of, as to bakchouses, 1081, 1176, 1360.
provisions of, as to protection from fire, 1308, 1356.
provisions of sect. 91 of Public Health Act, 1875, not to apply to workshops in certain cases, 1088.
register of children or young people employed in, 1084.
sanitary conveniences, provision of, 1362.
sanitary defects, notice of, to be given to sanitary authority by inspector, 1080, 1307; proceedings by inspector on default of sanitary authority, 1306, 1307; inspector to be informed of proceedings taken by sanitary authority, 1355.

INDEX.

FACTORY AND WORKSHOP ACTS—*continued.*

- sanitary provisions of, 1080, 1306, 1307.
- saving for persons employed in fruit cleaning, 1312.
- special exemptions for domestic and other factories and workshops, 1082—1084, 1311.
- special provisions for health in certain factories, 1081, 1361, 1362.
- special restrictions as to employment, 1360.
- special rules and requirements as to dangerous and unhealthy incidents of employment, 1309, 1310, 1357.
- tenement factories, substitution of owner of, for occupier for certain purposes, 1359.
- text of Act of 1878...1080—1088; of Act of 1883...1175, 1176; of Act of 1891...1306—1315; of Act of 1895...1354—1363.
- wearing apparel not to be made or washed in place where infectious disease, 1356.

FÆCAL

- matter, bye-laws as to removal of, 580.

FAIRS. *See also* MARKETS AND FAIRS, &c.

- abolition of, 972.
- alteration of date of, 1005.
- representation as to, may be made by district or county borough council, 727, 730.
- text of Act of 1871...972; of Act of 1873...1005.

FALSE

- evidence, punishment of, as perjury, 351.
- statement as to infected house, 147; as to name of owner of premises, 401.

FARES

- for hackney carriages, 919, 920, 922.
- for omnibus, bye-laws as to exhibition of table of, 1262.

FARMING,

- by local authority of land appropriated to sewage disposal, 61.

FEES,

- to clerk of peace for taxation of costs, 331.
- to medical practitioners for certificates as to infectious disease, 540.
- punishment for giving of, to, or receipt of by, member or officer of public body, 535 *et seq.*

FELLMONGER,

- nuisance arising from trade of, 134.
- restrictions on establishment of trade of, 131.

FENCING of

- abandoned mines, 998, 1227.
- buildings, &c. during erection or repair, 585, 892, 893.
- disused quarry, 1202.
- streets by urban authority, 169.

FEVER. *See* INFECTIOUS DISEASE.

FIELD GARDENS,

- application of compensation money received in respect of the sale of, 1129.
- provisions as to, in Commons Act, 1876...1054—1056.

FILTH,

- bye-laws for preventing nuisances from, 72.
- removal of, on notice by inspector of nuisances, 75.
- restrictions on throwing, into streams, 592.

INDEX.

FINANCIAL STATEMENT,

- duplicate of, to be sent to Local Government Board, 1101.
- stamp duty on, 1101—1103.
- submission of, to district auditor, 1101.

FIRE

- arms, penalty for discharge of, in streets, 913.
- brigade, employment of borough police as, 1334.
- engines, &c., provision of, by parish councils, 701; by urban authority, 914, 915; sending of, beyond district, 915.
- places, in cellar dwellings, 98; consumption of smoke from, 108, 109, 115; power of entry to enforce provisions as to consumption of smoke from, 124.
- plugs, provision of, 92; situation of, to be denoted, 92.

FIRES,

- bye-laws as to structure of buildings to secure prevention of, 204, 205.
- in chimneys, penalty for, 914.
- incorporation with Public Health Act of provisions of 10 & 11 Vict. c. 89, as to, 235; text of such provisions, 915, 919; amendment of provisions, 1334.

FISH,

- Conservancy Acts, transfer to county council of powers, &c., of small quarter sessions boroughs under, 511.
- inspection and examination of, 136.
- unfit for food—destruction of, by order of justices, 138; penalty for exposing for sale, 138; penalty for hindering examination or seizure of, 140; seizure of, 136.

FLAGGING

- of highways, 169; of private streets, 176.

FLOORS

- of new buildings, bye-laws as to, 205 *n*, 578.

FLOUR,

- inspection and examination of, 136.
- unfit for food—destruction of, 138; penalty for exposing for sale, 138; penalty for hindering examination or seizure of, 140; seizure of, 136.

FLUSHING

- of water-closets, bye-laws as to, 205 *n*, 578.

FOLKESTONE,

- mode of defraying expenses of urban authority for, 276.

FOOD,

- adulteration of, 1007. *See also* SALE OF FOOD AND DRUGS ACTS.
- provisions as to unsound meat to apply to all articles intended for, 582.

FOOTPATH. *See also* RIGHT OF WAY.

- repair and maintenance of, by parish council, 711.

FOOTWAYS,

- cleansing of, power to make bye-laws for, 91.
- driving or riding on, penalty for, 912.
- obstruction of, by goods, &c., penalty for, 912, 913.
- of private streets, power to compel paving, &c., of, 176.
- street includes, 12.

FORFEITURES,

- summary proceedings for recovery of, 333.

FORGED TRANSFERS ACTS,

- text of Act of 1891...1299; of Act of 1892...1319.

INDEX.

FORM of

- accounts of local authority, power to prescribe, 325.
- accounts of district and parish councils, power to prescribe, 754.
- certificate—of auditor, 924 ; of medical practitioner as to infectious disease, 540.
- charging order under Part II. of Housing of Working Classes Act, 1890...623, 677.
- claim of owner and proxy, 447, 448.
- grant of rentcharge, 322.
- mortgage, 319, 445 ; of transfer of mortgage, 320, 446.
- notice—as to claims of owners and proxies, 446 ; as to private street works, 445 ; requiring owner in rural district to provide water supply, 463, 464 ; requiring abatement of nuisance, 441 ; requiring premises to be made fit for habitation, 676.
- notices, &c., under Housing of Working Classes Act, 1890...617, 676, 1492.
- order of justice for admission of officer of local authority, 444.
- order of summary jurisdiction court—for abatement or prohibition of nuisance, 442, 444 ; for closing of premises unfit for habitation, 676 ; to permit execution of works by owner, 401, 444.
- rentcharge, 446.
- summons as to nuisances, 442 ; summons for closing order, 676.
- voting paper at poll of owners and ratepayers, 449.

FORMS

- in Schedule to Public Health Act, sufficiency of, 410.

FOULING of

- sanitary convenience used in common, 576.
- water—by gasworks, penalty for, 94, 866, 867 ; prevention of, 84, 94—97, 881, 882.

FOUNDATIONS

- of new buildings, bye-laws as to, 204, 205.

FRUIT,

- inspection and examination of, 136.
- pickers, bye-laws as to, 469.
- unfit for food—destruction of, 138 ; penalty for exposing for sale, 138 ; penalty for hindering examination or seizure of, 140 ; seizure of, 136.

FUEL ALLOTMENTS,

- powers of Charity Commissioners as to, 1054.

FULL NET VALUE,

- definition of, 11.

FURIOUS

- riding or driving in streets, 911.

FURNACES,

- consumption of smoke from, 108, 109, 115 ; power of entry of premises for purposes of provisions as to consumption of smoke from, 124.

GAME,

- definition of, 794.
- inspection, seizure, or destruction of, when unfit for food, 136—140.
- licensing of dealers in, 794, 795 ; by district or county borough council, 727, 730.
- text of Act of 1831...794, 795.

GANG MASTERS,

- licensing of, 940 ; by district and county borough councils, 727, 730.

INDEX.

GARDENS,

in square or street, protection of, 933, 934.

GAS

company, sale of undertaking of, to urban authority, 225, 226.
lands, sale of superfluous, 973.
mains and pipes—alteration of situation of, may be required by urban authority, 200; breaking up streets for laying of, 863—865.
manufacture of, on other than specified lands, prohibited, 973.
meters, powers as to, of council of borough with population under 10,000 to cease, 513.
nuisances from, 866, 867.
rents, recovery of, 865, 979.
supply of—powers of urban authority to contract for or undertake, 224; to working class lodging-houses, 647; provisions of Act of 1847 as to, 865.
testing of, 977.
undertaking—when provisional order may be granted to urban authority authorising, 224; purchase of, by urban authority, 225; provisional order authorising, under Gas and Waterworks Facilities Acts, 943—948, 1006.
waste or misuse of, 866.
water not to be fouled by washings from, 94, 866.

GAS AND WATERWORKS FACILITIES ACT, 1870 and 1873,

definitions in, 942.
description of cases within, 942.
inquiries under, 1006.
power of urban authority to obtain provisional order under, 224.
provisional orders authorising gas or water undertaking under, 943—948; amendment of provisional order under, 1006.
rules under, 1006, 1007; text of rules made by Local Government Board under, 1512.
text of Act of 1870...942; of Act of 1873...1006.

GASWORKS CLAUSES ACT, 1847,

definitions in, 862, 863.
provisions of, as to—access to special Act, 870; annual account by undertakers, 869; breaking up of streets for laying pipes, 863—865; guarding against fouling of water and other nuisances, 866, 867; the profit of the undertakers, 868; recovery of damages and penalties, 870; supply of gas and recovery of rents, 865; waste or misuse of gas, and injury to pipes, &c., 866.

GASWORKS CLAUSES ACT, 1871,

application of Act, 972.
prohibition in, against erection of gasworks elsewhere than on specified land, 973.
provisions of, as to—accounts, 978, 981—986; legal proceedings, 979; penalties, 978; recovery of gas rents, 979; sale of superfluous lands, 973; supply of gas to owners and occupiers, 974—976; to local authority, 976; testing of gas, 977, 980.

GATES,

opening outwards into street, 890, 891.

GENERAL DISTRICT RATE,

alteration of, 300, 363; to correspond to alteration made in valuation list, 300 *n*.
appeals against, 363 *et seq*.
assessment of, 282, 283; certain properties to be assessed at one-fourth only, 283, 548, 679.
collection of, 301.
deduction from, in respect of sewers where premises drained, 301, 302.
description in, of owners and occupiers, 300.

INDEX.

GENERAL DISTRICT RATE—*continued.*

- division of urban district into rating districts for purposes of, 284.
- estimate to be prepared before making, and to be open to inspection, 296.
- expenses of urban authority to be paid out of, 276.
- evidence of, 301.
- inspection and taking of copies of, 299.
- levy of, 278.
- levy of, by person appointed by Local Government Board to defray expenses of defaulting authority, 395.
- limit in local Act not to apply to, 307.
- making of, to meet deficiency in district fund, 278; notice of intention to make to be given, 279.
- mortgages of, as security for loans, 314.
- payment of, by instalments, 301; payment of quota by Universities, 308.
- payment out of—of expenses of urban authority, 276, 278; of cost of repair of highways, 293; of expenses of urban authority acting as burial board, 930.
- poor-rate books may be inspected for purposes of, 291.
- what properties to be rated to, 282.
- publication of, 301.
- not to be quashed for want of form, 350.
- quashing of, on appeal, 363 *et seq.*
- rating to, of owners instead of occupiers, 282, 283; of unoccupied premises and successive occupiers, 283.
- recovery of, summary proceedings for, 339.
- reduction or remission of, on score of poverty, 302.
- retrospective payments which may be included in, 278, 279.
- saving for existing leases and agreements, 302.

GENERAL EXPENSES OF RURAL AUTHORITY,

- contributions for—mode of raising, 310—312, 729; to be paid out of poor rate, 311; to be shown separately on precept, 310.
- highway expenses in rural district to be, 729.
- how to be raised, 309.
- special expenses may be directed to be raised in like manner as, 729.
- what are, 308.

GENERAL ORDERS OF THE LOCAL GOVERNMENT BOARD. *See also* REGULATIONS AND RULES.

- accounts of local boards, 1364—1373.
- audit of accounts of joint committees of district or district and parish councils, 1380; audit of accounts of rural district councils, 1377.
- dairies, cowsheds and milkshops, 1427.
- elections of rural district councillors, 1465—1491; of urban district councillors, 1439—1465.
- Local Government conferences, 1420.
- prescribing—adaptations of certain sections of Allotments Acts to proceedings under sect. 9 of Local Government Act, 1894...1417; form of certificate under Infectious Disease (Notification) Act, 1889...1429; form of advertisement and notices, &c., under Housing of Working Classes Act, 1890...1492.
- registration of margarine manufactories, 1495.

GIFTS,

- corruptly given to member or officer of public body, 535 *et seq.*
- of land, for open spaces, 1214; for public park, elementary school, or public museum, exemption of, from Mortmain and Charitable Uses Acts, 1251.
- power of parish council to accept and hold, 703.

GLEBE LANDS ACT, 1888,

- text of sect. 8 of, 1234.

INDEX.

GOVERNING BODY,

in urban district or county borough, conferment upon, of power to appoint overseers or assistant overseers, or powers, &c. of overseers or parish council, 730, 731; conferment upon, of powers of vestry under Poor Rate Assessment and Collection Act, 732.

GOVERNMENT DEPARTMENTS,

saving for powers, &c. of, as to sewers, 421.

GRANT of

charge by way of annuity to owner on completion of works for making dwelling-house fit for habitation, 622; form of charging order, 623, 677; incidence of charge, 623; transfer of charge, 624.

court of quarter sessions and commission of peace, revocation of, 513.

exclusive right of burial, 902, 903; registration and assignment of, 903; form of grant and assignment, 907.

rent-charge in respect of advances for private improvement expenses, 322.

right of placing monuments, &c. in cemeteries, 903.

GRANTS,

by county council—towards cost of union officers, 516; of part of salary of inspectors of nuisances and medical officers of health, 504, 505.

local, out of imperial exchequer, repeal of enactments relating to, 503.

GRATINGS

in surface of street, repair of, 586.

GRATUITOUS

supply of water, 89; supply of water for public baths, 91.

GRATUITY,

payment of, to officers, 262 *n*.

GRAVES,

not to be constructed in churches, 453.

spaces for, grant of, 902, 903.

GREENS. *See* VILLAGE GREENS.

GROUND,

filled up with offensive matter, buildings not to be erected on, 580.
for recreation. *See* RECREATION GROUNDS.

GUARDIANS,

acceptance of office by, 746.

additional, election of, from outside board, 717.

appointment by, of overseers, on non-receipt of notice from appointing authority, 748.

assistant overseers to cease to be appointed by, 768.

board-room and offices of, use of, by rural district council, 755.

chairman or vice-chairman of, election of from outside board, 717.

definition of, 5, 527.

disqualifications for office of, 739—744.

election of, to be under rules, 717 (*see also* ELECTIONS REGULATED BY RULES, &c.); union of parishes or division of parish into wards, for purpose of, 756, 757.

electors of, who to be, 716.

ex-officio or nominated, abolition of, 28 *n*, 715.

in London, application of Local Government Act, 1894, to, 730.

meetings and proceedings of, 755.

number of, for parishes divided by Act of 1894...766; fixing and alteration of, 756, 757.

may petition against Orders of County Council made under Part III. of Local Government Act, 1894...735.

INDEX.

GUARDIANS—*continued.*

- qualification of, 715.
- re-eligibility of, 746.
- resignation of, 746.
- retirement from office of, 717, 756, 757; elected at first elections under Act of 1894...766, 767.
- rural district councillors to be, 721.
- subscription by, towards maintenance of hospital, &c., 150 *n.*
- term of office of, 717.
- transfer to rural authority of infectious diseases hospital provided by, 150 *n.*
- transfer to parish council of powers, &c. of, as to sale, &c. of parish property, 701.
- vacation of office of, by absence from meetings, 743.
- vacancy (casual) in office of, declaration and notification of, 743, 744; filling of, 746.
- vice-chairman of, appointment, term of office and powers, 717, 755.

GYMNASIUM. *See also* MUSEUMS AND GYMNASIUMS ACT, 1891.

- converting of baths into, during winter, 1078.

HABITATION,

- bye-laws as to height of rooms intended for, 205 *n.*, 578.
- dwelling-house unfit for. *See* DWELLING-HOUSE.
- house or building unfit for, closing of, 121, 122, 204, 619, 620, 673, 674; bye-laws as to closing of, 204, 205.
- on letting of house to working class, implied condition as to fitness for, 650.
- tents, vans, &c., used for, 484, 485.

HACKNEY CARRIAGES. *See also* CONVEYANCE, PUBLIC.

- bye-laws as to, 922; confirmation of, 475.
- definition of, 916.
- deposit may be required for waiting, 920.
- drivers of, licence of, 918, 919; duration of licence of, 235, 1261.
- fares for, 919, 920, 922.
- incorporation with Public Health Act of provisions of 10 & 11 Vict. c. 89, as to, 235; text of such provisions, 916—922.
- licensing of, 916 *et seq.*, 1261.
- number of persons to be carried in, 919, 922.
- offences by proprietors or drivers of, 919—921.
- omnibus included in term, for certain purposes, 1261.

HARBOUR,

- powers of improvement commissioners, saving for, 759.
- reference to arbitration as to certain works affecting, 417, 418.
- saving for navigation of, and supply of water to, 415.
- saving for bridges over, 415.
- substitution of new for existing sewers under, 419.
- works not to be executed under or through without consent, 415.

HAWKING,

- person licensed for, not liable to payment of market tolls, 856.
- petroleum, 1125, 1126.

HEALTH,

- animals not to be kept so as to be injurious to, 72.
- privies, ashpits, &c., not to be injurious to, 68.
- sewers not to be constructed so as to be injurious to, 50.

HEARTHS

- of new buildings, bye-laws as to, 205 *n.*, 578.

INDEX.

HEIGHT

of rooms, bye-laws as to, 205 *n*, 578.

HIGH COURT,

determination by, of questions as to transfer of powers to county council, 507;
of questions as to transfer of powers, &c., under Local Government Act, 1894...762.

proceedings not to be moved into, 350.

submission to arbitration may be made rule of, 252.

HIGHWAY. *See also* ROAD and STREET.

agreements between highway authorities for improvement of, 1300.

area, definition of, in Local Government Act, 1888...527.

barbed wire, when nuisance to, removal of, 1338.

bye-laws as to carts, &c., on, 1096, 1098.

contribution by county council towards maintenance or improvement of, 495, 723.

declaration that highway unnecessary for public use, 709, 710, 1095.

declaration of private street to be, 198, 589, 689, 690.

dedication as, of site of obstructive building demolished, 627.

expenses in rural district—to be defrayed as general expenses, 729; may be charged exceptionally to contributory place, 729; defrayed out of property of parish, parish to remain entitled to benefit, 730.

expenses in rural parish where transfer to rural district council postponed, 771.

expenses in urban district, how to be defrayed, 293.

extraordinary traffic on, recovery of expenses of, 1094.

in Isle of Wight, 497.

lands used for materials for, consent of justices not required to sale of, 748.

locomotives on, 1097, 1098.

mines and minerals under, vesting of, 172 *n*.

obstructions of, 709, 710; costs of proceedings, as to, 491 *n*.

powers of rural district councils as to, 723.

rates—accounts as to, 296; not to be made on inhabitants of urban districts for roads without district, 165; recovery of arrears of, on constitution of urban district, 165; when to be made in urban districts, 293; certain acts not required when rate made by urban authority, 296.

repair of, in urban districts, costs of, 293; repair of, in part of parish not included in urban district, 294, 724; non-repair of, liability of urban authority for, 158 *n*—164 *n*.

repairable by inhabitants at large—adoption as, of private streets, 198, 589, 689, 690; adoption as, of new public roads, 165; adoption as, of public bridges over canals, &c., 166; paving, &c., of, by urban authority, 169; vesting of, in urban authority, 169.

repairable by parish or other area not district, powers of rural district council as to repair of, before becoming charge on district, 771.

repairable *ratione tenuræ*, powers of district council as to, 723.

stopping or diversion of, 709, 710.

street includes, 12.

trees in, planting, &c., of, 590.

HIGHWAY ACTS,

bicycles and tricycles, &c., to be carriages within, 523.

powers of surveyor of highways and vestry under, vesting of, in urban authority, 157.

transfer to Local Government Board of powers of Secretary of State under, 455.

HIGHWAY AUTHORITY,

in default, enforcement of duty of, by county council, 1090.

definition of term in Local Government Act, 1888...527.

rural district council to be, 157 *n*, 723.

urban authority to be, 157.

INDEX.

HIGHWAY DISTRICTS,

abolition of, 723.

to include local government districts for purposes of meetings of highway board, 454.

in South Wales, to be highway districts under Highway Acts, 478.

HIGHWAYS AND BRIDGES ACT, 1891,

text of, 1302.

HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878,

bye-laws of county authority under, 1096, 1099.

bridges, provisions as to, in, 1093.

definitions in, 1099, 1100.

discontinuance of unnecessary highways, 1095.

enforcement by county council of performance of duty by highway authority, 1090.

extraordinary traffic, provisions as to, in, 1094.

locomotives, provisions as to, 1097, 1098.

main road provisions of, 1091—1093. *See also* MAIN ROADS.

quarter sessions borough to be part of county for purposes of, 510; to be urban district for purposes of, 510, 512.

saving in, for minerals under disturnpiked roads, 1096.

text of, 1089—1100.

transfer to county council of powers of council of smaller quarter sessions boroughs under, 511, 512.

HOARDS,

putting up of, during progress of buildings, &c., 585, 892, 893.

HOP-PICKERS,

bye-laws as to, 410.

HORSE-FLESH,

regulation of sale of, 1259, 1260.

HORSES,

bye-laws as to, 236.

licensing of places for slaughtering, 728, 730, 781, 796.

penalty for riding or driving, on footpaths, &c., 912.

stands for, 236.

HOSPITAL. *See also* ISOLATION HOSPITALS ACT, 1893.

agreements for reception of sick into, 148.

belonging to guardians, transfer of, to rural sanitary authority, 148 *n*.

body of infected person dying in, to be removed only for burial, 555.

common, provision of, by two or more authorities, 148.

contracts for use of, 148.

detention in, of infected person without proper lodging, 556.

maintenance of patient in, recovery of cost of, 150.

memorandum of Local Government Board as to, 1437.

provision of, by local authority, 148.

removal to, of infected persons, 143, 144; from ships, 477.

subscription by guardians towards maintenance of, 150 *n*.

HOUSE. *See also* BUILDING AND DWELLING-HOUSE.

ash-pit for, power to enforce, 63—66.

building or re-building of—without sufficient privy or ash-pit accommodation, 63, 64; without drains, penalty for, 57.

cleansing and disinfecting of, 141, 551, 552; temporary shelter may be provided during disinfection of, 537.

common lodging. *See* COMMON LODGING-HOUSE.

definition of, 15.

drainage of, power to enforce, 54; into new sewers, 56.

to house visitation, regulations as to epidemic disease may require, 151.

INDEX.

HOUSE—*continued.*

letting of, without disinfection, penalty for, 146; penalty for making false statement as to infectious disease on letting, 147, 554.
lodging. *See* LODGING-HOUSE.
numbering of, 223, 888.
occupation of, without drains, prohibition of, 57; without supply of water, 461.
overcrowding of, 108; closing of house in case of two convictions for, 129.
part of, not to be required to be sold, 829.
precautions during erection or repair of, 223, 892, 893.
purification of, 73.
refuse, removal of, 69—72, 581; bye-laws may require secondary means of access for removal of, 205 *n.*, 578.
unfit for habitation, closing of, 121, 122, 204, 619, 620, 673, 674.
in unhealthy areas, improvement scheme for, 601 *et seq.*
water-closet in, power to enforce, 63—66.
water supply to, may be required, when, 87, 88; in rural district, 457 *et seq.*
whitewashing of, may be required, 73.

HOUSEHOLDERS,

complaint by—as to dwelling house unfit for habitation, 618, 619; copy of such complaint to be sent to county council, when, 634; as to nuisance, 126.
information as to nuisance may be given to authority by, 115.
representation by, as to obstructive buildings, 624; copy of representation to be sent to county council, when, 634.

HOUSING OF WORKING CLASSES ACT, 1885, text of unrepealed provisions of, 483—486.

HOUSING OF WORKING CLASSES ACT, 1890,
accounts under, and their audit, 652.
adoption of Part III. of, 641, 642.
application of—to Scotland, 655—658, 671, 674; to Ireland, 658—660, 672, 675.
application to London of Part II. of, 635—637.
bye-laws under, general provisions as to, 653.
cumulative, powers of Act to be, 654.
definitions in, 654, 655.
expenses of local authority under Part I. of, 614; under Part II. of, 633; under Part III. of, 642, 645.
forms under, 676, 677.
general order of Local Government Board, prescribing form of advertisement, notices, &c. under, 1492.
instruction of Local Government Board as to applications for provisional orders confirming improvement schemes under, 1521.
interested members of local authority not to vote on questions under, 654.
loans for purposes of Part I. of, 615, 616; of Part II. of, 633; of Part III. of, 646.
local inquiries under, general provisions as to, 653.
offences and fines under, general provisions as to, 654.
orders, notices, &c. under, general provisions as to, 653, 654.
Part I. Unhealthy areas, 600—617; Part II. Unhealthy dwelling-houses, 617—640; Part III. Working class lodging-houses, 640—648; Part IV. Supplemental, 648—655; Part V. Application of Act to Scotland, 655—658; Part VI. Application of Act to Ireland, 658—660; Part VII. Repeal and temporary provisions, 660.
penalty for preventing execution of Part II. of, 639, 640; for obstructing execution of, 654.
powers of county council under Part II. of, 634, 635.
repeals effected by, 660, 678.
report of proceedings under Part II. to be made to Local Government Board, 634.
Schedule 1...661; Schedule 2...663; Schedule 3...673; Schedule 4...676; Schedule 5...677; Schedule 6...677; Schedule 7...678.

INDEX.

HOUSING OF WORKING CLASSES ACT, 1894,
text of, 698.

HUNDRED,
repair by, of main roads, 496, 1093.

ILLEGAL

practices at elections under Local Government Act, 1894...745. *See also*
CORRUPT AND ILLEGAL PRACTICES.

IMPRISONMENT

of defaulting officers, 270.

IMPROVEMENT,

highway, contribution of county council towards, 495, 723.
main road, by county council, 490.
public walks and pleasure grounds, 226.
rate, levy of, for purposes of Public Improvement Act, 1860...928.
scheme under Part I. of Housing of Working Classes Act. *See* SCHEME FOR
IMPROVEMENT, ETC.
street, purchase of premises for, 201.

IMPROVEMENT ACT DISTRICT,

being borough, transfer of powers of commissioners to borough council, 408.
definition of, 4.
dissolution of, within borough, 371.
to be called urban districts, 4 *n*, 718.
to be urban sanitary districts, 24, 25.

IMPROVEMENT COMMISSIONERS. *See also* URBAN SANITARY AUTHORITY and URBAN DISTRICT COUNCIL.

accounts of, audit of, 328.
to be called urban district councils, 4 *n*, 718.
definition of, 4.
election of, in certain cases, 409.
expenses of, as urban authority, mode of defraying, 276.
being harbour authority, saving as to, 759.
incorporation and name of, 26.
transfer of powers of, to borough council on constitution of borough, 408.
to be urban sanitary authority, 24, 25.

IMPROVEMENT OF LAND ACT, 1864,

application of, to works for supply of sewage, 61.
certain works of water supply to be deemed improvement of land within, 1071.

INCAPACITY. *See also* DISQUALIFICATION.

for election to public office, of person convicted under Public Bodies (Corrupt
Practices) Act, 1889...536.

INCIDENCE of

general district rate, 283, 548, 679.
library rate, 1325.
special expenses rate, 311, 548, 679.

INCORPORATED

Acts, construction of, 410; penalties under, recovery and application of, 410.

INCORPORATION

of Cemeteries Clauses Act, 1847, with Public Health (Interments) Act, 1879...
468.
of improvement commissioners, 26.

INDEX.

INCORPORATION—*continued.*

of joint board for united district, 380.

of local boards, 26.

with Public Health Act—of certain provisions of Towns Improvement Clauses Act, 223, 234; of provisions of Towns Police Clauses Act, 235; of provisions of Markets and Fairs Clauses Act, 1847...232, 233; of Water-works Clauses Acts, 83, 84; of Lands Clauses Acts, 246.

of rural district councils, 722.

INCUMBENTS,

exemption of, from expenses of private street works, 197, 688; from poor rate, 197 *n*; payments to, provisions of Cemeteries Clauses Act, 1847, as to, 904, 905.

INDECENT

bathing, 923.

books, pictures, &c., 913.

exposure of person in streets, 913.

INDUSTRIAL

institution. *See* TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892.

INFANT LIFE PROTECTION ACT, 1872,

district council to be local authority under, 727.

expenses of executing, 996.

inquests to be held on infants dying in registered house, 996.

register of infants under, 995.

registration of houses under, 995.

INFANTS,

disqualification of, for office, 739.

INFECTED,

bedding, &c., destruction of, 142; disinfection of, 143, 551, 552; penalty on sale, exposure or transmission of, 144, 145.

house—cleansing and disinfection of, 551, 552; penalty for letting, 146; penalty for ceasing to occupy without disinfection, 554; temporary shelter may be provided for persons removed for disinfection of, 557.

places, quarantine of vessels coming from, 783—793.

person—expenses of rural authority in relation to, to be general expenses, 308; penalty on exposure of, in public place, 144, 145; removal of, to hospital, 143, 144; without proper lodging, detention of, in hospital, 556.

rubbish thrown into ashpit to be disinfected, 557.

shop, penalty for letting, 479 *n*.

INFECTIOUS DISEASE,

ambulance for persons suffering from, 143.

body of person dying of—burial of, 154; burial of, by order of justico, 555; prohibition of, retention of, 554; to be removed from hospital for burial only, 555.

on canal boats, 1074.

cleansing and disinfecting of premises to check spread of, 141.

in common lodging-houses, bye-laws as to, 102; notice of, to be given, 103, 584.

definition of, in Notification Act, 1889...542; extension of, definition of, 542.

detention in hospital of person without proper lodging, suffering from, 556.

exposure of person suffering from, penalty for, 144, 145.

hospital for—may be deemed nuisance, 110 *n*; provision of, by local authority, 148; provision of, by two or more authorities in common, 148; maintenance of patients in, recovery of cost of, 150; transfer of, by guardians to rural sanitary authority, 148 *n*; memorandum of Local Government Board, as to, 1437. *See also* ISOLATION HOSPITALS ACT, 1893.

letting of house infected with, penalty for, 146, 147.

INDEX.

INFECTIOUS DISEASE—*continued*.

- in lodging-houses, byelaws as to notice of, 106.
- notification of, 539; saving for local Act provisions as to notification of, 545;
General Order of Local Government Board prescribing certificate as to
notification of, 1429.
- prevention or checking of, 551, 552,
- regulations of Local Government Board, as to, 147; for the prevention of,
151—153.
- removal to hospital of person suffering from, 143.
- removal to mortuary of body of person dying from, 154.
- on ships, 477.
- in tent or van, 484.
- vessels which are within 6 Geo. IV. c. 78, for purposes of, 454.

INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889,

- adoption of, 541.
- expenses of executing, 543.
- text of, 539—546.

INFECTIOUS DISEASE (PREVENTION) ACT, 1890,

- adoption of, 549; rescission of adoption, 558.
- notice to be given of certain provisions of, 557.
- text of, 548—559.

INFORMATION,

- for criminal offences and complaint for payment of money, distinction between,
333 *n*, 334 *n*.
- of nuisance, may be given by whom, 115.
- in summary proceedings, within what time to be laid, 335.

INFORMER,

- payment to, of half of penalty, 337.

INGRESS

- to places of public resort, 586, 587.

INHABITANTS,

- certificate of ten, as to nuisance from offensive trades, 134.
- complaint by, as to nuisance, 126.
- of urban district, not liable for rates for repair of roads outside, 165.

INJURIOUS MATTERS,

- not to pass into sewers, 570.

INJURY to

- notice boards, &c., penalty for, 401.
- sanitary convenience used in common, 576.
- works or property of local authority, 402.

INN,

- definition of, 147 *n*.
- penalty for exposure in, of infected person, 144.
- penalty for letting, after use by infected person, 146.

INQUEST

- on infant dying in house registered under 35 & 36 Vict. c. 38...996.

INQUIRY,

- local. *See* LOCAL INQUIRY.
- under sect. 57 of Local Government Act, 1888, General Order of Local
Government Board as to, 1388.

INDEX.

INSCRIPTIONS

in consecrated part of cemetery, rights of bishop as to, 904.

INSPECTION of

accounts, &c., prior to audit, 326, 327.
accounts of rural district council, 755.
bye-laws by ratepayers, 257, 258.
canal boats, 1074.
common lodging-houses, 104.
dairies by medical officer of health, 550.
district for detection of nuisances, 115.
estimate of cost of private street works, 176, 683; of estimate for general district rate, 296.
lodging-houses, bye-laws as to, 106.
map of sewerage system of urban district, 51.
meat and other foods, 136; penalty for obstructing, 140.
new streets and buildings, bye-laws may provide for, 205.
papers relating to poll of owners and ratepayers, 436.
plan of sewage works without district, 62.
plan and section, &c. of private street works, 176, 683.
rates and rate-books, 296; for purposes of meetings of owners and ratepayers, 434.
register of mortgages, 320.
statement as to proposed general district rate, 279.
telegraph posts, wires, &c., 568.
valuation list and poor-rate books for purposes of general district rates, 291.
working class lodging-houses, 647.

INSPECTOR OF LOCAL GOVERNMENT BOARD,

under Alkali, &c. Acts, 1118—1120.
attendance of, at meetings of local authority, 274.
certificate of, under Rivers Pollution Prevention Act, 1876, as to best practicable means, 1067.
inquiry by. *See* LOCAL INQUIRY.
powers of, 390.

INSPECTOR OF NUISANCES,

appointment of, by urban authority, 260, 505; by rural authority, 263, 505;
for two or more districts jointly, 263.
duties of, may be prescribed by Local Government Board, when, 263, 505.
entry of, on premises to examine drains, &c., 68; to examine and seize meat, 136, 140.
inspection by, of meat supposed to be horseflesh, 1259.
notice of, as to removal of filth, 75.
notice to, of change of occupation of licensed slaughter-house, 583.
powers of, may be exercised by medical officer of health, 263.
qualification of, when part of salary repaid by county council, 263, 505.
regulations of Local Government Board as to—rural, 1505; urban, 1497.
remuneration of, 260, 505; payment by county council of part of remuneration of, 504, 505.
report of—as to house in rural district without sufficient water supply, 457; as to necessity for providing privy accommodation, 63.
seizure by, of unsound meat, &c., 136, 140.
surveyor may be, 264.
tenure of office of, 260, 263.

INSPECTORS,

under Lighting and Watching Act, 1833, transfer of property, &c. to urban authority, on constitution of urban district, 226.

INSTALMENTS,

district rate may be made payable by, 301; private improvement expenses may be declared to be payable by, 341, 342.

INDEX.

- INSTRUCTIONS OF LOCAL GOVERNMENT BOARD as to,
appeals by members or officers of local authorities against decision of auditors, 1374.
applications for Provisional Orders under Public Health Act, 1875...1518; for confirming improvement scheme under Part I. of Housing of Working Classes Act, 1890...1521.
representations by town councils for alteration of borough boundaries, 1524.
- INTEREST,
on expenses incurred by local authority for which owner liable, 341.
payable on loans from Public Works Loans Commissioners, 324 *n*, 652, 1030, 1044, 1109, 1332.
- INTERESTED,
justices, when may act in matters affecting authority, 346.
member of district council not disqualified, when, 742.
member of local authority not to vote on questions under Housing of Working Classes Act, 1890...654.
officers of local authority not to be interested in contracts, 265, 481.
- INTERMENTS
within churches, 453.
- INTERROGATORIES
in actions by or against local authorities, 358 *n*.
- INVESTMENT of
rural authority with urban powers, 378, 562, 681, 724, 725.
sinking funds, 316.
urban authority with powers under Public Health (Water) Act, 1878...463.
- IRELAND,
application to—of Housing of Working Classes Act, 1890...658—660, 672, 675;
of Infectious Disease (Notification) Act, 1889...546; of Infectious Disease (Prevention) Act, 1890...558; of Public Health Acts (Amendment) Act, 1890...566.
- IRON WORKS,
saving for, 424.
- ISLE OF WIGHT,
roads and tolls in, 497.
- ISOLATION HOSPITAL. *See also* HOSPITAL.
memorandum of Local Government Board as to, 1437.
- ISOLATION HOSPITALS ACT, 1893,
acquisition of land under, 1341.
application to county council for establishment of hospital, 1339, 1340.
audit of accounts under, 1344.
charges for patients, 1342.
contribution by county council to hospitals, 1343.
definitions in, 1344.
districts under, constitution of, 1340, 1341.
expenses under—classification of, 1342; payment and recovery of, 1343.
hospital committee under, 1341.
limits of Act, 1339.
loans for purposes of, 1343.
local inquiry by county council, 1340.
management of hospital, 1342.
report of county medical officer as to necessity for establishment of hospital, 1340.
text of, 1339—1344.
training of nurses, 1342.

INDEX.

ISSUE

of stock by urban authority, 599.

JOINT BOARDS,

assignment of powers, &c., to, 380.
borrowing powers of, 324, 325.
cesser of jurisdiction of constituent authority on constitution of, 380.
chairman of, 429.
common fund of, contributions to, 381, 387.
constituted under Sewage Utilization Act, 1867, dissolution and reconstruction of, 412.
constitution and incorporation of, 380.
delegation to constituent authority of powers by, 380.
existing at passing of Public Health Act, 1875, saving for, 414.
expenses of, 381.
meetings and proceedings of, 381; rules as to, 429.
members of, qualification, mode of election, continuance in office, and vacancies of, 380.
minutes of, evidence of, 429.
port sanitary may be, 384, 480.
precepts of, 381, 382.
rates may be levied by, on default of constituent authority to comply with precept, 387.

JOINT COMMITTEES,

of county and county borough councils—for alteration of areas in more than one county, 735; boundary commissioners' report to be laid before, 735; powers of, as to number of guardians or rural district councillors, union or division of parishes for elections of guardians or rural district councillors, and retirement of guardians and rural councillors, 757; as to defaults of council of rural district in more counties than one, 759.
of parish councils or parish and district councils for purposes of adoptive Acts, 749.
of parish and district councils—appointment, term of office, powers, and costs of, 753; accounts of, 754; General Order of Local Government Board as to audit of accounts of, 1378—1381.
for purposes of Rivers Pollution Prevention Act, 1876, constitution and powers of, 500.

JUDGMENT,

against local authority, enforcement of, 356 *n.*
of summary jurisdiction court, appeals against, 363 *et seq.*

JURISDICTION of

constituent authority, to cease on constitution of joint board, 380.
county court, under Rivers Pollution Prevention Act, 1876...1066, 1067.
parochial committees, 273.
port sanitary authority, 385.
quarter sessions, under Public Bodies (Corrupt Practices) Act, 538.

JURY,

settlement by, of compensation, under Lands Clauses Act, 815—819.

JUSTICE,

may act, though member of local authority, or liable to contribute, 346.
allowance of, not required to highway rate of urban authority, 296; not required to special expenses rate, 311.
chairman of district council, to be, 718.
complaint to—as to nuisance by local authority, 119; by individual, 126; of nuisance arising from offensive trade, 134.

INDEX.

JUSTICE—*continued.*

- consent of, to sale of exhausted highway lands no longer required, 748.
- disqualification of, when interested, 346—348.
- may require official representation to be made as to unhealthy areas, 602.
- order of, as to—burial of dead body, 555; destruction of unsound meat, &c., 138, 582; detention in hospital of infected person without proper lodging, 556; entry of local authority on premises, 124, 126; form of order, 444; removal of infected person to hospital, 143; removal to mortuary and burial of body of infected person, 154, 555.
- search warrant may be granted by, 140.
- summons by—as to cleansing offensive ditches, 75; of defaulting officers, 269; of persons causing nuisance by offensive trade, 134; requiring attendance of person against whom complaint as to nuisance made, 119.
- transfer to district council of certain powers of, 727, 728.

KEEPER OF COMMON LODGING-HOUSE,

- certificate of character of, may be required, 101.
- definition of, 100 *n.*
- disqualification of, on third conviction, 105.
- lime-washing of house by, 103.
- names, &c., of, to be entered in register, 99.
- notice of infectious disease, to be given by, 103, 584.
- offences by, 104, 105, 584.
- penalty on, for refusing inspection, 104.
- registration of, required, 101.
- report may be required from, as to persons resorting to house, 103.

KNACKERS ACTS,

- text of Act of 1786...781, 782; of Act of 1844...796.

KNACKERS' YARDS,

- licensing of, 781, 782, 796, 894, 895; by district and county borough councils, 728, 730.
- term "slaughter-house" includes, 20.

LABOURING CLASS. *See* WORKING CLASS.

LABOURING CLASSES LODGING-HOUSES ACTS. *See also* WORKING CLASS LODGING-HOUSES.

- adoption of, by urban authority, 28.
- authority for execution of, in urban districts, 28.
- definition of, 21.
- repeal of, 660, 678.

LAKE,

- sewage to be purified before discharge into, 40.

LAMPS,

- provision of, by urban authority, 224.
- street, penalty for extinguishing, 913.

LANCASTER,

- Duchy of, sale of lands by, to local authority, 249.

LAND,

- acquired under improvement or reconstruction schemes, sale, &c., of, 608; extinction of rights of way and other easements over, 614, 629.
- acquisition of—for allotments, 1217—1219 (*see also* COMPULSORY ACQUISITION OF LAND, &c.); for purposes of working class lodging-houses, 643; under improvement schemes, 611—614, 663—672; under reconstruction schemes, 628, 629; by parish councils, 702.

INDEX.

LAND—*continued.*

agricultural, assessment of, to general district rate, 283; to special expenses rate, 311.
appropriated for sewage disposal, dealing with, 60, 61.
appropriation of—for accommodation of persons displaced under improvement scheme, 614; for purposes of working class lodging-houses, 643.
covered with water, assessment of, to general district rate, 283; to special expenses rate, 311.
definition of, in Public Health Act, 1875...6; in Housing of Working Classes Act, 1890...656.
of Duchy of Lancaster, sale of, 249, 250.
entry on—provisions of Lands Clauses Act, 1845, as to, 827—829; for purposes of Public Health Act, 1875, general powers as to, 400; under improvement scheme on making deposit, 668.
purchase of, by local authority, 244; incorporation of Lands Clauses Acts, 246; compulsorily, 246 *et seq.* (*see also* COMPULSORY ACQUISITION, &c.); from officer of authority, 481.
purchase or leasing of, for sewage disposal works, 58; for markets, 229.
sale, &c., of, for purposes of working class dwellings, 650.
sale or exchange of, by local authority, 244.
sewage, mortgage of, as security for loans, 318.
sewer may be made through, 38.
superfluous—sale of, 244, 838, 839, 973; letting of, 249.

LANDLORD,

division of expenses between tenant and, in certain cases, 411.

LANDS CLAUSES ACTS,

amendment of, for purposes of Part I. of Housing of Working Classes Act, 1890...663—672.
incorporation of, with—Baths and Washhouses Act, 896; Public Health Act, 246; Housing of Working Classes Act, 1890...611; order of county council for compulsory acquisition of lands for allotments, 708.

LANDS CLAUSES CONSOLIDATION ACT, 1845,

definitions in, 808.
limit of time for compulsory purchase under, 837.
notices under, 840.
part of house or building not to be required to be sold, 829.
provisions of, with respect to—common or waste lands, 831—833; conveyances of lands, 826; copyhold lands, 830; entry on lands, 827—839; interests omitted to be purchased, 837, 838; lands charged with rentcharges or other incumbrances, 835; lands in mortgage, 833—835; lands subject to leases, 836; purchases by agreement, 809—811; purchases otherwise than by agreement, 812—821; purchase-money or compensation coming to parties under disability or not making title, 821—825; recovery of penalties, forfeitures, and costs, 840—842; sale of superfluous lands, 838, 839; small portions of intersected land, 830.
taxation of costs under, 1354.

LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860, text of, 931, 932.

LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895, text of, 1354.

LANDS CLAUSES (UMPIRE) ACT, 1883, text of, 1174, 1175.

LANE, street includes, 12.

INDEX.

LAUNDRIES,

application of Factory Acts to, 1358, 1359.
sanitary defects in, 1307.

LEASES,

lands subject to, provisions of 8 Vict. c. 18, as to, 836.

LEASING of. *See also* LETTING.

land appropriated for sewage disposal, 60, 61.
land by local authority for sewage disposal works, 58.
public walks and pleasure grounds, 226.
waterworks by local authority, 76; by company to local authority, 89.

LEE,

saving for conservators of, 1069.

LEGAL

business, taxation of costs of, 331.
proceedings, 333—370; appearance in, of local authority, 349; name of local authority need not be proved in, 350; not to be quashed for want of form nor to be removable into superior court, 350; under Public Health Acts Amendment Act, 1890...563. *See also* PROCEEDINGS.

LESSEES,

costs of, in opposing improvement schemes, 605, 606.
notice to be given to—of improvement schemes, 603; of intention to construct sewage works without district, 62; of lands proposed to be taken compulsorily, 246; of proceedings for compulsory acquisition of lands for allotments, 704.
objection by, to sewage works without district, 62.
service on—of copy of compulsory purchase order, 247; of notices, orders, &c., 359; of provisional order confirming improvement scheme, 605.

LETTING of. *See also* LEASING.

allotments, 1220.
cellar dwellings—prohibition of, 97; of existing cellar dwellings, conditions of, 97.
house for working classes, implied condition as to fitness for habitation, 650.
infected house, penalty for, 146.
public sanitary conveniences, 575.
superfluous lands, 249.

LEVEL of

new streets, bye-laws as to, 204, 205.
streets, alteration of, by urban authority, 169.

LEVELLING of

highways, 169.
private streets, 176, 682. *See also* PRIVATE STREET WORKS.

LEVYING of

general district rates, 278.
rate by joint board or port sanitary authority, 387.
special expenses rates, 311.

LIABILITIES,

adjustment of—on alteration of areas, 377; scheme or order under Local Government Act, 1888, may provide for, 520; general provisions as to, in Local Government Act, 1888...521; general provisions as to, in Local Government Act, 1894...760, 761.
of burial board, transfer of, to urban authority, 454, 750.
definition of term, in Local Government Act, 1888...528.
of existing authorities under adoptive Acts, on transfer, 750.
existing, saving for, in Local Government Act, 1894...773.

INDEX.

LIABILITIES—*continued*.

- under repealed Acts, saving for, 426.
- transfer of, on alteration of areas, 376, 377; on transfer of powers and duties, 759, 760.
- transfer of, to council of borough on constitution, 408.
- transfer of, settlement of differences arising out of, 398; summary proceedings for determining questions as to, 762.

LIABILITY

- of urban authority for accidents caused by non-repair, &c., of highways, 158 *n*—164 *n*.

LIBRARIES,

- public. *See* PUBLIC LIBRARIES ACTS.

LICENSED PREMISES,

- meetings not to be held on, 757.

LICENSING,

- district, definition of, 599.
- emigrant runners, 727, 730, 1348; form of licence, 1353.
- game dealers, 794, 795; by district or county borough councils, 727, 730; form of licence, 795.
- gang-masters, 940; by district and county borough councils, 727, 730.
- hackney carriages and their drivers, 916—919, 1261; duration of license, 335, 1261.
- justices—definition of, 599; grant by, of music and dancing licenses, 596 *et seq.*
- to keep petroleum, 991, 992, 1126.
- knackers'-yards, 781, 782, 894, 895; by district or county borough councils, 727, 730; duration and cancellation of license, 796.
- music and dancing, 596—598.
- passage brokers, 727, 730, 1347; form of license, 1352.
- pawnbrokers, 727, 730, 1003.
- proprietors, drivers, &c., of horses, donkeys, &c., let for hire, 236.
- proprietors and boatmen of pleasure boats, 236.
- slaughter-houses, 583, 894, 895; duration and revocation of license, 583; notice of, to be affixed on premises, 234.
- use of tramways by third parties, 959.

LIGHTING,

- of district, 224.
- inspectors, vesting of property, &c. of, in urban authority, 226.
- of main roads, 496.
- of private streets, 176, 682. *See also* PRIVATE STREET WORKS.
- of public clocks, 228, 592.
- of streets, 224.

LIGHTING AND WATCHING ACT, 1833. *See also* ADOPTIVE ACTS, ETC.

- provisions of, superseded by Public Health Act, 1875...226.
- vesting in urban authority of property, &c., of inspectors under, 226.

LIME-WASHING of

- bakehouses, 1081, 1176.
- common lodging-houses, 103.
- lodging-houses, bye-laws as to, 106.

LIMIT

- of rate imposed by local Act not to apply to rates under Act, 307.

LIMITED OWNERS RESERVOIRS AND WATER SUPPLY (FURTHER FACILITIES) ACT, 1877,

- text of, 1071, 1072.

INDEX.

LINE,

building, regulation of, 201, 204, 531; exemption of railway buildings from provisions as to, 205.
street, improvement of, 223, 888, 891.

LISTS

of parochial electors, claims, &c., to be on, 739.

LITERARY

institutions, transfer of, to local authorities, 1301.

LOANS. *See also* LOCAL LOANS ACT, 1875.

under Baths and Washhouses Acts, 850; sanction of Local Government Board to, 455, 1079.

of companies, provisions of 8 & 9 Vict. c. 16, as to, 800—803, 807, 808.

to companies, &c., for provision of working class lodging-houses, 646, 647.

to defray expenses of local authority in default, 396.

of joint boards, 314, 324.

of local authority—application in discharge of, of proceeds of sale of superfluous lands, 244; commission for negotiating, legality of, 318 *n*; limitation of amount of, 316; mode of repayment of, 316; period for repayment of, 316, 599; Public Works Loans Commissioners may lend, 323; power of Local Government Board to satisfy themselves as to application of moneys borrowed from Loan Commissioners, 324 *n*, 1036, 1089, 1125; purposes of, 314; only for purposes of permanent works, 316; receiver may be appointed in connection with, 321; sanction of Local Government Board to, 314; sanction to, only to be given after local inquiry in certain cases, 316.

of local authorities for purposes of—adjustments under Local Government Act, 1888...522; Allotments Act, 1887...1223; costs of promoting or opposing provisional orders, 393; Electric Lighting Acts, 1161; Housing of Working Classes Act, 1890, Part I., 615, 616; Part II., 633, 698; Part III., 646; Museums and Gymnasiums Act, 1891...1286; Public Libraries Acts, 1326; regulations as to epidemic diseases, 473; technical instruction, 1271; Tramways Act, 1870...952, 953.

of port sanitary authority, 324, 325.

by Public Works Loans Commissioners. *See* PUBLIC WORKS LOANS ACTS.

of rural authority, security for, 315, 318.

of urban authority—acting as burial board, 932; for private improvement purposes, 317; security for, 314, 318; may be raised by creation and issue of stock, 599; period for repayment of, on consolidation, 599.

LOCAL ACTS,

alteration or repeal of, under Public Health Act, 1875...397; by scheme or order under Local Government Act, 1888...520.

definition of term local and personal act, 766.

extending of provisions of, 397, 520.

limit of rates imposed by, not to apply to rates under Public Health Act, 307.

rating exemptions under, to apply to general district rates, 283.

saving for acts of authorities under, 422; saving for provisions of, as to notification of infectious disease, 545.

sewers for drainage or irrigation of land made under, vesting of, 32.

supersession of, by provisions of Infectious Disease (Prevention) Act, 1890...558.

transfer to council of borough of powers, &c., under, 1151; on constitution of borough, 408.

transfer to urban authority of powers, &c., under, 28.

LOCAL AUTHORITIES (EXPENSES) ACT, 1887,

text of, 1228.

LOCAL AUTHORITY. *See also* LOCAL BOARD, RURAL AND URBAN AUTHORITY and RURAL AND URBAN DISTRICT COUNCIL.

- accounts of, form and date for making up of, 325, 754.
- actions by or against, interrogatories in, 358 *n*.
- agreements with. *See* AGREEMENTS.
- appearance of, in legal proceedings, 349.
- attendance of, at conferences, 476, 477.
- borrowing powers of, 314—324. *See also* LOANS.
- business of, conduct of, 271—275.
- bye-laws of. *See* BYE-LAWS.
- combination of—for providing common hospital, 148; for purposes of epidemic diseases, 153; for execution of works, 382.
- committees of. *See* COMMITTEES.
- consent of, to execution of works by authority of adjoining district, 382.
- contracts of, provisions as to, 238. *See also* CONTRACTS.
- contribution by, to works under agreement for supply or distribution of sewage, 61.
- corruption in office by member or officer of, 535 *et seq*.
- damages by, compensation for, 402.
- default of—as to nuisances, 127; power to enforce duty on, 394. *See also* DEFAULTING AUTHORITY.
- definition of, 6, 545; in Housing of Working Classes Act, 1890...655.
- duties of, as to—cleansing of earth-closets, privies, ashpits, &c., 69; inspection of district for detection of nuisances, 115; causing premises to be cleansed and disinfected, 141; closing of dwelling-house unfit for human habitation, 619; removal of house refuse, 69.
- duty of, to enforce law, 483.
- exchange of lands by, 244.
- execution by, of regulations as to epidemic diseases, 152.
- judgment recovered against, enforcement of, 356 *n*.
- loans of. *See* LOANS.
- meetings of, attendance at, of inspectors of Local Government Board, 274. *See also* MEETINGS and MEETINGS OF NON-BOROUGH DISTRICT COUNCIL.
- notice by—as to abatement of nuisance, 115; requiring cleansing and disinfecting of premises, 141; as to alteration of situation of gas and water pipes in streets, 200.
- officers of, 260—271. *See also* OFFICERS.
- orders of—for demolition of dwelling-house unfit for habitation, 620, 621, 653; for demolition of obstructive building, 625, 653; for execution of works to render dwelling-house fit for habitation, 621; prohibiting supply of milk from dairy, 550.
- penalty on, for neglect to remove house refuse or cleanse privy, &c., 71.
- powers of, as to—abatement of nuisances, 115, 128; altering or discontinuing sewers, 49; cleansing offensive ditches, 75; closing polluted well, 96; communication of sewers of adjoining districts, 60; compelling paving, &c. of streets, 176; dealing with lands appropriated for sewage disposal, 60, 61; demolition of houses unfit for habitation, 620, 621; disposal of sewage, 58; enforcing drainage of houses, 54; enforcing privy and ashpit accommodation, 63, 64; enforcing purification of houses, 73; entry upon premises, 122, 124, 400; the execution of Part III. of Housing of Working Classes Act, 1890...642; laying of water mains, 81; water supply, 76, 87, 88; making sewers, 38; requiring houses to drain into new sewers, 56; sewage works without district, 61—63.
- proceedings by, against defaulting officers, 269, 270; to prevent pollution of streams, 96.
- promotion or opposition of provisional order by, costs of, 343.
- promotion of or opposition to Bill in Parliament by, consents required to, 1001, 1002.
- property of, penalty for damaging, 402.
- protection of, from personal liability, 352; in execution of statutory or other public duty, 692 *et seq*.
- purchase by—of lands, 244; of sewers, 35. *See also* PURCHASE.

INDEX.

LOCAL AUTHORITY—*continued.*

provision by, of—disinfecting apparatus and ambulance, 143; hospital for sick, 148; mortuary, 153; place for post-mortem examinations, 155.
regulations of, as to—allotments, 1219; cabmen's shelters, 589; communications between drains and sewers, 51; management of places for post-mortem examinations, 155; public sanitary conveniences, 575; removal from ship to hospital of infected person, 144.
regulations of, provisions as to bye-laws not to apply to, 259.
to report annually to Local Government Board, 275.
sale of lands by, 244.
sewers to be made and maintained by, 36.
vesting in, of property of sanitary authority under the Sanitary Acts, 30; of sewers, 32.
works of, penalty for damaging, 402.

LOCAL BOARDS. *See also* DISTRICT COUNCIL; URBAN DISTRICT COUNCIL; and URBAN SANITARY AUTHORITY.

to be burial board, in certain cases, 453, 925; acting as burial board, 930—932.
to be called urban district councils, 4 *n.*
chairman of, election of, on constitution of board, 429.
definition of, 4.
election of, 26.
incorporation of, 26.
meetings of, rules as to, 426 *et seq.*
name of, 26; change of name of, 409.
proceedings of, rules as to, 426 *et seq.*
saving for constitution of, in certain cases, 422.
transfer of powers of, to borough council, on constitution of borough, 408.

LOCAL FINANCIAL YEAR,

fixing of, 523; of district councils, 754.

LOCAL GOVERNMENT ACT, 1888,

appointed day for purposes of, 529.
definitions in, 526—529.
definitions in, to apply to Local Government Act, 1894...764.
regulations of Local Government Board as to inquiries and notices, under sect. 57 of, 1388.
repeal of Acts effected by, 530.
text of, 490—530.

LOCAL GOVERNMENT ACT, 1894,

appointed day for purposes of, 771, 772.
definitions in, 764—766.
duty of county council to bring, into operation, 771.
repeals effected by, 773—777.
text of Part I., parish meetings or parish councils, 698—715; Part II., guardians and district councils, 715—733; Part III., areas and boundaries, 733—736; Part IV., supplemental, 737—766.

LOCAL GOVERNMENT ACTS,

definition of, 4 *n.*, 21 *n.*

LOCAL GOVERNMENT BOARD,

appeal to, against—apportionment of expenses of works common to two contributory places, 309; auditors' decisions, 327, 328, 799, 923; decision of local authority in case of expenses recoverable summarily, and of private improvement expenses, 360; orders of county council as to areas and boundaries, 518, 736; order of county council for compulsory acquisition of land, 706; refusal of county council to make order for compulsory acquisition of land, 705; requirement of rural authority as to water supply, 459.

LOCAL GOVERNMENT BOARD—*continued.*

- appointment by, of—arbitrator, under Local Government Act, 1888...521; inspectors, under Alkali Acts, 1118—1120; inspector under Rivers Pollution Prevention Act, 1876...1067; person to perform duty of defaulting authority, 394; umpire, 252.
- approval by, of—market tolls, 233; order extending definition of infectious disease, 542; promotion of or opposition to Bill in Parliament, 1001; regulations as to removal of infected person from ship to hospital, 144; resolution as to constitution of special drainage district, 379.
- arbitration by—as to main roads, 493—495; general provisions as to, in Local Government Act, 1888...522—523.
- borrowing by, to defray expenses of executing duty of defaulting authority, 396.
- certificate of—as to expenses of executing works of defaulting local authority, 396; as to grants, under Local Government Act, 1888...504 *et seq.*
- circulars of, as to—accounts order of local boards, 1344; applications for provisional orders by town councils, 1516; by rural district councils, 1517; by urban district councils, 1515; audit of accounts of joint committees of district or district and parish councils, 1378; cholera regulations, 1399, 1406, 1408; Dairies, Cowsheds, and Milkshops Order, 1886...1425; dairies, &c., where no regulations in force, 1428; election of urban district councillors, 1439; local government conferences, 1419; model regulations for allotments, 1382; order prescribing regulations as to inquiries, 1388; order prescribing regulations and adaptations under sect. 9 of the Local Government Act, 1894...1412; registration of margarine manufactories, 1495.
- complaint to, of default of local authority, 394.
- confirmation by, of—bye-laws, 257, 475; bye-laws, under Municipal Corporations Acts, for prevention of nuisances, 259; order of county council altering boundaries, 517; order of county council for compulsory acquisition of land, 707.
- consent of, to—appropriation of land, &c., for purposes of working class lodging-houses, 643; creation and issue of stock, 599; proceedings under Part III. of Rivers Pollution Prevention Act, 1876...1063; sale or exchange of lands, &c., vested in authority for purposes of working class lodging-houses, 644.
- copy to be sent to, of every order of county council under Local Government Act, 1894...763.
- copy to be sent to, of resolution adopting—Infectious Disease (Notification) Act, 1889...541; Infectious Disease (Prevention) Act, 1890...549; Museums and Gymnasiums Act, 1891...1285; Private Street Works Act, 1892...681; Public Health Acts Amendment Act, 1890...562; Public Libraries Act, 1892, in urban district, 1335.
- to be county authority for purposes of Allotments Act, 1887, in county borough, 509.
- determination by, of reasonable cost for supply of water, 87.
- disallowance by, of—bye-laws, 257; construction of reservoir, 80, 81; order of county council altering boundaries, 518; order of county council for compulsory acquisition of land for allotments, &c., 707; sewage works without district, 63.
- establishment and constitution of, 987.
- examination by, into application of loans borrowed from Public Works Loans Commissioners, 324 *n.*, 1036, 1089, 1125.
- general orders of, as to—accounts of local boards, 1364—1373; audit of accounts of joint committees of district or district and parish councils, 1380; audit of accounts of rural district councils, 1377; dairies, cowsheds, and milkshops, 1427; election of rural district councillors, 1465; of urban district councillors, 1439; local government conferences, 1420; prescribing adaptations of certain sections of Allotments Acts to proceedings under sect. 9 of Local Government Act, 1894...1417; prescribing form of certificate under Infectious Disease (Notification) Act, 1889...1429; prescribing form of advertisement and notices under Housing of Working Classes Act, 1890...1492; registration of margarine manufactories, 1495.

INDEX.

LOCAL GOVERNMENT BOARD—*continued.*

- inquiries by, 389, 390. *See also* LOCAL INQUIRY.
- inspectors of. *See* INSPECTOR OF LOCAL GOVERNMENT BOARD.
- instructions of, as to—appeals by members and officers of local authority against decisions of auditors, 1374; applications for provisional orders under Public Health Act, 1875...1518; applications for provisional orders confirming improvement schemes, 1521; representations for alteration of borough boundaries, 1524.
- medical officer of, appointment of, 927; salary of, 455.
- memoranda of, as to—*isolation hospitals*, 1437; certificates under Infectious Disease (Notification) Act, 1889...1431; precautions against cholera, 1404; precautions against epidemic diseases, 1431; precautions against small-pox, 1435; proceedings under sect. 9 of Local Government Act, 1894...1412; purchase of periodical publications, 1373.
- nomination by, of member of rural authority, 273, 721, 722.
- notice to be given to, of order prohibiting supply of milk from dairy, 550.
- orders of, generally—finality of, 389; publication of, 389, 456; matters which may be provided for in, under Local Government Act, 1888...519, 520.
- orders of, as to areas, boundaries, and districts—altering areas, general provisions as to, 376, 377; altering boundaries of electoral division, 516; confirming orders of county councils as to areas and boundaries, 518; constituting local government district in pursuance of resolution of owners and ratepayers, 373; constituting port sanitary authority, 384, 480; dissolving special drainage district, 371; settling boundaries of places, 373, 379; uniting districts for purposes of appointment of medical officer of health, 382, 383; as to validity of vote for resolution for constituting local government district, 375, 376.
- orders of—allowing or disallowing sewage works without district, 63; allowing or disallowing construction of reservoir, 81; as to appointment of charity trustees in urban district divided into wards, 731; awarding compensation for loss of office or emoluments, 408; combining authorities for purposes of prevention of epidemic diseases, 153; as to compulsory acquisition of land by parish councils or for allotments, 705—708; conferring upon urban district councils or other representative body power of appointing overseers or assistant overseers, or powers, &c., of overseers or parish council, or the powers of vestry under Poor Rate Assessment and Collection Act, 1869...730—732; consenting to issue of stock, 599; determining appeal against apportionment of expenses common to two or more contributory places, 309; determining appeal as to private improvement expenses, 360; determining appeal by owner against requirement of rural authority as to supply of water, 460; as to expenses of executing duty of defaulting authority, 394, 395; fixing scale of charges for water supply, 88, 462; investing rural authority with urban powers, 378, 562, 681, 725; as to joint appointment of medical officer of health or inspector of nuisances, 263; limiting time for performance of duty by defaulting authority, 394; sanctioning scheme of reconstruction under Part II. of Housing of Working Classes Act, 1890...628.
- petition to—for compulsory purchase order, 246; for settlement of boundaries of place, 375.
- police officer may be empowered by, to proceed against nuisances, 127.
- may prescribe form of accounts of authorities, and date to which to be made up, 325, 754; may prescribe in what district ship to be deemed to be, 130.
- proceedings instituted by, costs of, 389.
- provisional orders of, generally—Act confirming to be public general statute, 391; alteration or repeal of Act confirming, 391; bill to confirm, introduction, &c. of, 391; costs of, 393; evidence of, 391; revocation of, 391; matters which may be included in, under Local Government Act, 1888...519, 520; application to orders under Local Government Act, 1888, of provisions of Public Health Act, 1875...525.
- provisional orders of, altering areas, general provisions as to, 376, 377.
- provisional orders of, for—altering boundary of county or borough, 516; altering or repealing local Acts, 397; altering mode of defraying expenses of

LOCAL GOVERNMENT BOARD—*continued.*

- urban authority, 278; authorizing gas undertaking, 224; confirming scheme under Part I. of Housing of Working Classes Act, 1890...604—606; compulsory purchase of lands, 247; constituting joint committee for purposes of Rivers Pollution Prevention Act, 1876...500; constituting local government district, 372; constituting port sanitary authority, 384; constituting, uniting, &c., county boroughs, 516; dealing with boroughs not urban districts, 515; dissolving, extending, or diminishing local government districts, 371; dissolving Improvement Act district within borough, 371; forming compensation district, under Brine Pumping (Compensation for Subsidence) Act, 1891...1289; forming united district, 379 *et seq.*; preventing discharge of gases from salt or cement works, 1117; settling differences and adjusting accounts arising out of alterations of areas, 398; uniting districts for appointment of medical officer of health, 383.
- recommendation of, as to loans by public works loans commissioners, 324.
- regulations of—as to allotments, text of, 1385; under Canal Boats Act, 1391; as to cholera, 1399—1411; under Gas and Water Works Facilities Acts, 1512; as to attendances at conferences, 476, 477, 1420; as to inquiries and notices under sect. 57 of Local Government Act, 1888...1388; as to medical officer of health appointed for united districts, 383; as to the prevention of epidemic diseases, 151—153, 473; as to the prevention of spread of infectious disease, 147, 534; as to the qualification, &c., of medical officers of health, and inspectors of nuisances, 263, 505; text of such regulations, rural, 1505; urban, 1497; as to stock, 599, 600.
- report to be made to—by local authorities annually, 275; as to proceedings under Part II. of Housing of Working Classes Act, 1890...634.
- representation to—by county council as to failure of district council to put Public Health Acts in force, 503; by county or borough council as to alteration of boundary of borough, county, or electoral division, 516.
- resolution of owners and ratepayers to be sent to, 441.
- rules of, as to elections—guardians to be elected under, 717; urban district councillors to be elected under, 720; what to be provided for, in, 744; text of rules as to rural district councillors, 1465; as to urban district councillors, 1439.
- sanction by, to—agreement for communication of sewers of adjoining districts, 60; agreement for supply of water to adjoining district, 87; appointment of district medical officer as medical officer of health, 263; appointment of same person as medical officer of health or inspector of nuisances for two or more districts, 203; change of name of local board, 409; construction of reservoir, 81; costs of authority in relation to provisional orders, 393; delegation by port sanitary authority of powers to riparian authority, 386; expenses of local authority, exempts from disallowance by auditor, 1228; loans of local authorities, 314, 316; loans under Baths and Washhouses Acts, 455; purchase of lands for new street, 201; purchase of water works, 76; purchase of gas works, 225; sewage works without district, 63; temporary supply of medicines and medical assistance, 151.
- saving for powers of, as to alteration of parishes, 519.
- scale of expenses of elections under Local Government Act, 1894, may be fixed by, when, 747; scale of water charges may be fixed by, 88 *n.*, 462.
- seal, style and acts of, 988.
- substituted for secretary of state, 454; for treasury as regards loans under Baths and Washhouses Acts, 455.
- transfer to, of—officers, 455; powers of Board of Trade under Alkali Acts and Metropolis Water Acts, 455; powers of privy council, 486, 987, 989; powers of Secretary of State, 455, 987, 989.

LOCAL GOVERNMENT BOARD ACT, 1871,
text of, 987—989.

LOCAL GOVERNMENT DISTRICTS. *See also* URBAN DISTRICTS.
being borough, transfer of powers of local board to borough council, 408.
to be called urban districts, 4 *n.*
definition of, 4.

[71]

INDEX.

LOCAL GOVERNMENT DISTRICTS—*continued*.

- constitution of, by provisional order, 372 ; by order in pursuance of resolution of owners and ratepayers, 373 ; objection to validity of vote for resolution as to constitution, 375, 376 ; transfer of powers, &c., on constitution, &c., of, 377.
- dissolution, extension or diminution of, 371.
- division of, into wards, 372.
- to be urban sanitary districts, 24, 25.

LOCAL GOVERNMENT REGISTER OF ELECTORS,

- consists of whom, 737 *n*.
- and parliamentary register together form register of parochial electors, 737.

LOCAL GOVERNMENT (STOCK TRANSFER) ACT, 1895,

- text of, 778, 779.

LOCAL INQUIRY,

- as to alteration of boundary of county, borough, or electoral division, 516 ; of urban or rural district or parish, 517, 1388.
- under Commons Act, 1876...1049.
- as to complaint of defaulting local authority, 394.
- as to compulsory acquisition of lands under Local Government Act, 1894...704, 705, 707, 708.
- as to compulsory purchase order, 246.
- as to constitution of local government district on objection, 375, 376.
- as to construction of reservoir, 81.
- by county councils, under Local Government Acts, 1888 and 1894, expenses of, 763.
- as to disputed boundary of urban district, 379.
- under Gas and Water Works Facilities Act, 1870...1006.
- loans not to be sanctioned without, in certain cases, 316.
- by Local Government Board—for what matters to be held, 389, 390 ; costs of, 389 ; under Local Government Act, 1888...525 ; under Housing of Working Classes Act, 1890...604, 606, 611, 653 ; under Local Government Act, 1894, general provisions as to, 763.
- as to proposed settlement of boundaries, 373.
- as to proposed provisional order, 391.
- by secretary of state, under Housing of Working Classes Act, 1890...604, 606, 611, 653.
- as to sewage works without district, 63.
- under Tramways Act, 1870...967.

LOCAL LOANS ACT, 1875,

- annuity certificates under, 1019.
- borrowing and reborrowing under, 1026.
- coupons under, 1023.
- debentures and debenture stock under, 1018, 1019.
- definition in, 1027.
- discharge of loans, 1021, 1201.
- execution and supply of securities under, 1024.
- forgery and loss of certificates under, 1026.
- general rules in and under, 1025, 1027.
- investments on loans under, 1025.
- loans under official sanction, 1025.
- notice of trust in relation to securities under, 1020.
- priority of loans under, 1020.
- register of nominal securities issued under, 1024.
- remedies for non-payment of loans under, 1020.
- stock certificates under, 1023.

LOCAL LOANS SINKING FUNDS ACT, 1885,

- text of, 1201.

INDEX.

- LOCAL TAXATION (CUSTOMS AND EXCISE) ACT, 1890,**
application and distribution of English share of local taxations (customs and excise) duties, 1278, 1279.
- LOCAL TAXATION RETURNS ACTS,**
text of Act of 1860...929, 930; of Act of 1877...1077, 1078.
- LOCOMOTIVES,**
bye-laws as to, 1098, 1099; in larger quarter sessions boroughs, 510.
- LODGING-HOUSES,**
bye-laws as to, 106, 484.
common. *See* COMMON LODGING-HOUSES.
for seamen, bye-laws as to, 1345.
for working-classes. *See* WORKING CLASS LODGING-HOUSES.
- LODGINGS of**
fruit-pickers, bye-laws as to, 469.
hop-pickers, bye-laws as to, 410.
- LONDON,**
application to, of Part II. of Housing of Working Classes Act, 1890...635—637;
of provisions of Local Government Act, 1894, as to guardians, 730.
county of, definition of, in Housing of Working Classes Act, 1890...656.
port of, provision as to, 387.
secretary of state may determine whether cases in, to be dealt with under
Part I. or Part II. of Housing of Working Classes Act, 1890...648.
- LONDON COUNTY COUNCIL,**
contribution by, for purposes of carrying into effect scheme under Part II. of
Housing of Working Classes Act, 1890...637, 648.
loans of, for purposes of Housing of Working Classes Act, 1890...615, 636.
medical officer, for purposes of Act of 1890, may be appointed by, 651.
medical officer of, to be deemed medical officer of local authority, 651.
powers of, to make scheme under Part II. of Act of 1890...636, 637.
purchase by, of lands for purposes of working class lodging-houses, 643.
- LONDON GAZETTE,**
publication in, of general orders of Local Government Board, 456; of regulations of Local Government Board as to epidemic, &c. diseases, 147, 152.
- LOSS,**
caused by setting back or forward of building, compensation for, 201.
of office, compensation for, 408, 768, 769.
- MAIN ROADS,**
accounts of expenses of maintenance, &c., of, 1093.
arbitration by Local Government Board on differences as to, 493—495.
breaking up of, 496.
bridges over, maintenance, &c. of, 490.
bye-laws as to, 1096.
in county boroughs, 509 *n*.
declaration of ordinary roads as, 1092; declaration not to take effect till
repaired, 495.
declaration of, in quarter sessions boroughs, 511, 512.
definition of, 529.
dismaining of, 1092, 1093, 1303.
drains in connection with, 494.
hundred liable for repair of, when, 496, 1093.
in Isle of Wight, 497.
lighting of, 496.

INDEX.

MAIN ROADS—*continued.*

maintenance and repair of—by county council, 490; by county council on default of district council who have undertaken maintenance, &c., 495; county council may contract with district council for, 493; county council may require district council to undertake, 493; payment by county council, when powers as to, retained by urban authority or undertaken by district council, 492, 493; urban authority may claim to retain, 492; urban authority of quarter sessions borough may claim to retain, 511.
obstructions on, 490.
in larger quarter sessions boroughs, 510.
saving as to liability for, 525.
in South Wales, 498.
turnpike roads to become, when, 1091.
vesting of, in county council, 494.
waste beside, 490.

MAIN SEWERAGE DISTRICT,

constituted under Public Health Act, 1848, dissolution of, and reconstruction as united district, 412.

MAINS FOR WATER,

breaking up of streets for laying of, 83, 84.
carrying of, within and without district, 81.
constant supply of water in, 82.
pressure of water in, 82.
situation of, urban authority may require alteration of, 200.

MAINTENANCE of

cemetery by local authority, 465.
footpaths by parish council, 711.
highways, contribution of county council towards, 495, 723.
main roads—by county council, 490, 495; by district council, 493; by urban authority, 492, 511.
patient in hospital, recovery of cost of, 150.
public walks and pleasure grounds, 226.
sewers by local authority, 36.
waterworks by local authority, 76.

MAKING of

general district rates, 278.
separate rates in rural parishes, 311.

MANAGEMENT of

allotments, 1219.
baths and washhouses, 852.
public libraries, 1324.
slaughter-houses, bye-laws as to, 234.
working class lodging-houses, 644.

MANAGERS

of allotments—appointment of, by sanitary authority, 1219; election of, by registered electors, 1222; power of parish council to apply for election of, 702; transfer to parish council of powers, &c. of, 702.

MANUFACTORIES. *See also* FACTORIES.

facilities to be afforded for drainage from, into sewers, 1064.
pollution of streams by drainage from, 1062—1064.
sanitary conveniences for, 576, 577.

MANURE,

removal of—on notice by inspector of nuisances, 75; periodically, 76.

MAP,

improvement schemes to be accompanied by, 602; deposit of, with confirming authority, 663.
of sewerage system, 51.

INDEX.

MARGARINE ACT, 1887,

general order of Local Government Board as to registration under, 1495.
text of, 1209—1212.

MARKET,

approaches to, 229.
bye-laws as to, 232, 233, 861; confirmation of, 475.
establishment of, 232, 233.
house, construction of, 229.
notice of opening of, 855.
place, provision of, 229.
protection of, 232, 233, 855—858.
regulation of, 232, 233.
removal of, 230 *n*.
rights—purchase or leasing of, 229; purchase, &c. of, from company, 233, 234;
 saving for existing, 229.
sales elsewhere than in, prohibition of, 856.
stallages, rents and tolls for, 229, 232, 233, 860, 861.
tolls—purchase or leasing of, 229; fixing of, 232, 233, 860.
undertaking of company, purchase of, by urban authority, 233, 234.
unwholesome meat, &c., in, 858.
weighing of goods and carts, 858—860; of cattle, 1207, 1303.

MARKET GARDENS,

assessment of, to general district rate, 283; to special expenses rate, 311.

MARKETS AND FAIRS CLAUSES ACT, 1847,

definitions in, 854, 855.
incorporation with Public Health Act, of provisions of, 232, 233.
provisions of, as to—bye-laws, 861; holding and protection of market, 855—
 858; stallages rents and tolls, 860, 861; weighing goods and carts, 858—
 860.

MARKETS AND FAIRS (WEIGHING OF CATTLE) ACTS,

text of Act of 1887...1207—1209; of Act of 1891...1303—1305.

MEAT,

condemnation of, 582.
unsound, provisions as to, 136—140; provisions as to, to apply to all articles
 intended for food, 582.

MEDICAL

accommodation, regulations as to provision of, 151.
assistance, temporary supply of, by local authority, 151.

MEDICAL OFFICER,

of Local Government Board, appointment of, 927; salary of, 455.
poor law—appointment of, as medical officer of health, 263; assignment to, of
 duty of assisting medical officer of health of united district, 383; re-
 muneration of, for attendance on vessels under regulations as to epidemic
 diseases, 152.

MEDICAL OFFICER OF HEALTH,

absence or illness of, appointment of deputy in case of, 616.
appointment of—by urban authority, 260, 501, 505; by rural authority, 263,
 501, 505; by two or more districts jointly, 263; by county council, 501;
 for purposes of regulations for prevention of epidemic diseases, 152; in
 London for purposes of Housing of Working Classes Act, 1890...651.
certificate of, as to—cleansing and disinfection of premises, 141; nuisance from
 offensive trade, 134; purification of house, 73; removal from hospital for
 burial only of dead body of infected person, 555; retention in house of
 dead body of infected person, 554; sanitary condition of artisans' dwellings
 where exemption from inhabited house duty claimed, 1273.
complaint by householders to, as to dwelling-house unfit for habitation, 618,
 619.

INDEX.

MEDICAL OFFICER OF HEALTH—*continued.*

- of county—may act for district council, 501 ; may make representations under Part II. of Housing of Working Classes Act, 1890, when, 640.
- definition of term, 549.
- deputy, appointment and remuneration of, 263, 264, 616.
- disinfection of bedding may be ordered by, 553.
- duties of, may be prescribed by Local Government Board, 263, 505.
- duties of, under Housing of Working Classes Act, 1890, may be performed by temporary deputy, 651.
- expenses of, when appointed for united district, 383.
- inspection by—of dairies, 550 ; of meat and other foods, 136, 140 ; of meat supposed to be horseflesh, 1259.
- in London county, to be deemed medical officer of local authority for purposes of Housing of Working Classes Act, 1890...651.
- notice to be given to, of infectious disease in common lodging-house, 103.
- notification to, of infectious disease, 539 ; how notices and certificates to be sent to, 543.
- powers of inspector of nuisances may be exercised by, 263.
- qualification of, 263, 501, 502, 505.
- regulations of Local Government Board as to (rural), 1505 ; (urban), 1497.
- remuneration of, 260, 263 ; when appointed for united district, 383 ; payment by county council of part of, 504, 505.
- report of, to be sent to county council, 502, 503 ; to be in writing, 652.
- representation by—as to dwelling-house unfit for habitation, 618 ; as to obstructive buildings, 624 ; as to unhealthy areas, 602 ; default of medical officer to make representation, 610.
- search warrant may be granted to, 140.
- seizure by, of meat and other foods, 136 ; penalty for hindering, 140.
- tenure of office of, 260, 263, 505.
- union of districts for appointment of, 382, 383.
- vessels may be boarded by, without subjecting to quarantine regulations, 783 *n.*

MEDICAL PRACTITIONER,

- appointment of, to inquire into unhealthy area on default of medical officer of health, 610 ; to act as medical officer in execution of Housing of Working Classes Act, 1890, in London, 651.
- certificate of, as to—cases of infectious disease, 539 ; form of such certificate, 540, 1429 ; gratuitous supply of forms of such certificate, 540 ; cleansing and disinfection of premises, 141, 146, 554 ; nuisance from offensive trade, 134 ; purification of house, 73 ; removal of body of infected person for burial only, 555 ; retention in house of dead body of infected person, 554.
- charges of, for attendance on persons on vessels, 153.
- not disqualified by receipt of fees for certificates as to infectious disease, 544.
- fees to, for certificate as to infectious disease, 540.

MEDICINES,

- temporary supply of, by local authority, 151.

MEETINGS,

- annual, of urban and rural authorities, 271, 272 *n.*
- committee, 274, 774.
- joint board, 381 ; rules as to, 429, 430.
- local authority's, attendance at, of inspectors of Local Government Board, 274.
- local board's, rules as to, 426 *et seq.*
- owners and ratepayers. *See* OWNERS AND RATEPAYERS.
- rural authority's, proceedings at, 271, 272.
- urban authority's, 271, 272. *See also* MEETINGS OF NON-BOROUGH DISTRICT COUNCIL.

MEETINGS OF NON-BOROUGH DISTRICT COUNCIL,

- absence from, vacation of office for, 743.
- annual, chairman to be elected at, 426 ; date of, 428.

INDEX.

MEETINGS OF NON-BOROUGH DISTRICT COUNCIL—*continued.*

- application to, of provisions of Public Health Act, 1875...765.
- chairman to be chosen at, in absence of chairman of council, 427; casting vote of chairman at, 427.
- not to be held on licensed premises, 757.
- names of members present as well as voting to be recorded, 427.
- questions at, how to be determined, 428.
- quorum at, 427.
- regulations may be made by council as to, 426.
- rules as to, 426 *et seq.*
- vacation of office, by absence from, 743.

MEMORANDA OF LOCAL GOVERNMENT BOARD as to,

- isolation hospitals, 1437.
- certificates under Infectious Disease (Notification) Act, 1889...1431.
- precautions—against cholera, 1404; against epidemic diseases, 1431; against small-pox, 1435.
- proceedings under section 9 of Local Government Act, 1894, for compulsory acquisition of land for allotments, &c., 1412.
- purchase of periodical publications, 1373.

MEMORIAL,

- against confirmation of order for compulsory purchase of lands for allotments, 706, 707.
- of owner against requirement of rural authority to provide water supply, 459; to be deemed complaint of default of rural authority, when, 460.

MERCHANT SHIPPING ACT, 1894,

- bye-laws as to seamen's lodging-houses, 1345.
- emigrant runners, provisions as to, 1348.
- passage brokers, provisions as to, 1346, 1347.

METALLIFEROUS MINES REGULATION ACT, 1872,

- provisions of, as to fencing abandoned mines, 999.

METER,

- gas, provisions of Gas Works Clauses Act, 1871, as to, 974, 975.
- water—may be supplied by, 85; repair of, and charges for meter, 85; register of meter to be evidence, 86; penalty for injuring, &c. meter, 86.

METROPOLIS. *See also* LONDON.

- definition of, 3, 526.
- nuisance arising from offensive trade within or without, 136.
- nuisances existing without, but caused within, or *vice versa*, 128, 129.
- Public Health Act, 1875, not to apply to, 1.
- Water Acts, transfer to Local Government Board of powers, &c., under, 455.

METROPOLITAN BOARD OF WORKS. *See also* LONDON COUNTY COUNCIL.

- sale to, of certain London prisons, 483.
- saving for, 421.

METROPOLITAN POLICE DISTRICT,

- definition of, 3 *n.*

MEWS,

- removal of manure periodically from, 76.

MIDDLESEX,

- registration in, of charging order under Housing of Working Classes Act, 1890...623.

INDEX.

MILK,

- prohibition of supply of, from dairy, 550.
- purveyors, registration of, 487.
- samples of, for analysis, 1103, 1104.
- unfit for food, provisions as to, 136—140.

MILKSHOPS,

- circular of Local Government Board to sanitary authorities where no dairy regulations in force, 1428.
- entry of, by local authority, 486.
- expenses of local authority as to, 486.
- local authorities, for purposes of provisions as to, who are, 486.
- offences against order and regulations as to, prosecution of, and penalties for, 487.
- Orders of 1885 and 1886 as to, 1422, 1427.
- transfer to Local Government Board of powers of Privy Council as to, 486.

MILLBANK PRISON,

- sale of, to Metropolitan Board of Works, 483.

MINERALS,

- under disturnpiked roads, 1096.
- under highways, vesting of, 172 *n*.
- saving for, 424.

MINES,

- application to sanitary works of provisions of Waterworks Clauses Act, 1847, as to, 470, 471; text of those provisions, 873—875.
- construction of, under sanitary works, 471.
- fencing of abandoned, 998, 1227.
- pollution of streams by drainage from, 1062—1064.
- privy accommodation above ground at, 1227.
- sanitary works over, limitation of right of support for, 472.
- saving for, 424.
- under disturnpiked roads, 1096.
- under highways, vesting of, 172 *n*.
- under streets, crossed by telegraph wires, &c., saving for, 570.

MINUTE,

- books of local boards, provisions of accounts, order as to, 1367.
- of proceedings of non-borough district council, evidence of, 428; of joint board, 429.
- of proceedings of committees, evidence of, 774.

MISUSE

- of water, 84, 880, 881, 937, 938.

MODIFICATION

- of improvement schemes under Housing of Working Classes Act, 1890...610.

MONUMENTS,

- erection of, in streets and public places, 590.
- grant of right to erect in cemetery, 902, 904.
- removal of, from disused burial grounds, 1213.

MOORING PLACES,

- for pleasure boats, fixing of, 236.

MORTGAGE,

- of companies, provisions of 8 & 9 Vict. c. 16, as to, 800—803, 807, 808.
- form of, 319, 445.
- lands in, provisions of 8 Vict. c. 18, as to, 833—835.
- of rates and funds by urban authority, 314; by rural authority, 315; by joint boards and port sanitary authorities, 324.
- receiver may be appointed on application of mortgagees under, 321.
- register of, 320.
- sealing of, 319.
- of sewage land and plant, 318.
- transfer of, 320; form of transfer, 446.

INDEX.

MORTMAIN,

lands may be held without licence in, by local boards and improvement commissioners, 26; by joint boards, 380; by rural district councils, 722.

MORTMAIN AND CHARITABLE USES ACTS,

application of sect. 6 of Act of 1888 to assurances by deed to local authorities, 1315.

conditions under which assurances may be made to charitable uses, 1250, 1251; land assured for charitable uses to be sold, 1305.

definitions in Act of 1888...1253.

exemption from—of assurances for public park, elementary school, or public museum, 227 *n*, 1251; of assurances for working class dwellings, 1276.

forfeiture on unlawful assurance or acquisition in mortmain, 1249.

grant of licences in mortmain, 1249.

repeals effected by Act of 1888...1253—1255.

text of Act of 1888...1249—1255; of Act of 1891...1305, 1306; of Act of 1892...1315.

MORTUARIES,

bye-laws with respect to, 153.

interment of bodies received into, 153.

provision of, by local authority, 153.

removal to, and burial of body of infected person, 154.

MUNICIPAL CORPORATIONS ACT, 1882,

application of parts of, to elections under Local Government Act, 1894...745.

application and adaptation of—to elections of rural district councillors, 1472, 1489, 1490; to elections of urban district councillors, 1446, 1463.

borough bridges, provisions as to, in, 1151, 1156.

bye-laws under, for good government of borough and suppression of nuisances, 259, 1132, 1133.

computation of time and distance, 1152, 1153.

corrupt practices, provisions as to, 1133, 1134. *See also* CORRUPT AND ILLEGAL PRACTICES.

definitions in, 1131, 1132.

election petition, provisions as to, 1134—1150. *See also* ELECTION PETITION.

inspection of documents under, 1153.

notices on town hall, 1153.

substitution of, in former Acts, 1153, 1157.

transfer of powers, &c., under Local Acts to corporation, 1151.

working men's dwellings, 1150, 1154, 1155.

MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884,

application of, to elections under Local Government Act, 1894...745.

application and adaptation of, to elections of rural district councillors, 1473; to elections of urban district councillors, 1447.

MUSEUM,

exemption of assurances for, from Mortmain and Charitable Uses Act, 1888...1251.

provision of, under Public Libraries Acts, 1323.

MUSEUMS AND GYMNASIUMS ACT, 1891,

acquisition of land under, 1287.

admission to museum and gymnasium, 1285.

adoption of, 1284.

appointment of officers and servants, 1286.

bye-laws and regulations under, 1285.

closing for repairs, 1286.

expenses and borrowing under, 1286.

provision under, of museum or gymnasium, 1285.

sale of museum or gymnasium when too expensive, 1287.

text of, 1284—1287.

MUSIC AND DANCING LICENCES,

duration of, 597.
granting of, 596, 597; granting of, for fourteen days, 598.
notice to be given of intended application for, 597; no notice required on application for renewal of, 596; notice of licensing to be affixed to premises, 598.
penalty for using premises without, 597; for breach of, 598.
premises not to be used without, 596.
registration of, 596.
transfer of, 597.

NAME,

corporate, of Improvement Commissioners, 26; of local board, 26; of rural district council, 722.
of district council, change of, 752.
of local authority need not be proved in proceedings, 350.
of owners and occupiers need not be stated in notices, orders, &c., 359; in proceedings against nuisances, 338; in proceedings under Part II. of Housing of Working Classes Act, 1890...639; in rates, when unknown, 300.

NAMING

of streets, 223, 888.

NAVIGATION

rights, saving for, 415—419.

NEGLECT

of local authority to remove house refuse or cleanse privy, &c., penalty for, 71.

NEW

buildings—bye-laws as to, 204, 205, 578; continuing offence against bye-laws as to, 217; pulling down or removal of, when contrary to bye-laws, 205, 217; retention of plans of, by local authority, 216 *n*; what to be deemed to be, 222.
house, prohibition of occupation of, without drains, 57; without supply of water, 461.
streets—bye-laws with respect to, 204, 205; cases deciding what are, 206 *n*—211 *n*; continuing offence against bye-laws, as to, 217; purchase by authority of premises for, 201; removal of works contrary to bye-laws, 205, 217; width of, meaning of term “width,” 217 *n*.

NEWSPAPER,

member of district council not disqualified by interest in, 742.

NOMINATED

guardians, abolition of, 715.
members of urban authority, abolition of, 719.

NOMINATION,

of candidates regulated by rules under Local Government Act, 1894...744; relation of nomination to election, 746; nomination included in term election, 765.
of candidates—at election of rural district councillors, 1467; at election of urban district councillors, 1441.
of members of rural sanitary authority by Local Government Board, 27; of members of rural district council, 721, 722.
paper, electors not to subscribe in more than one parish or ward, 744; offences in relation to, 745.

NOTICE,

of adoption of private streets, 198, 589, 689, 690.
of adoption of—Infectious Disease (Notification) Act, 1889...541; Infectious Disease (Prevention) Act, 1890...549; Museums and Gymnasiums Act, 1891...1285; Public Health Acts Amendment Act, 1890...561; Public Libraries Act, 1892...1335; Private Street Works Act, 1890...680.

INDEX.

NOTICE—continued.

- of appeals to quarter sessions, 363 *et seq.*
- of appointment of overseers to be given to guardians, 700, 748.
- of audit, 326, 754, 923, 1381.
- by auditor to person surcharged, 942.
- authentication of, 358.
- as to claims of owners and proxies, form of, 446.
- destruction or defacement of, penalty for, 592.
- of election of urban district councillors, 1441, 1448; of election of rural district councillors, 1467, 1475.
- of extension of definition of infectious disease under (Notification) Act, 1889... 542.
- under Housing of Working Classes Act, 1890...653, 654; confirming authority may prescribe, 617; may dispense with, in certain cases, 617; requiring premises to be made fit for habitation, form of, 676; text of general order of Local Government Board prescribing, 1492.
- of improvement scheme dealing with unhealthy areas, publication and service of, 603.
- of infectious disease in common lodging-house, 183, 584; of infectious disease to be sent to medical officer of health, 539.
- by inspector of nuisances as to removal of filth, 75.
- of intention to—apply for confirmation of bye-laws, 257, 568; connect drain with sewer, 51; to construct sewage works without district, 61, 62; to construct reservoir, 80; to make general district rate, 279; to take fifteen or more houses under Housing of Working Classes Act, 1890...609.
- inviting tenders for contracts, 238.
- of local inquiry as to scheme, &c. under Part I. of Housing of Working Classes Act, 1890...611.
- of meeting at which proposal to be considered to adopt—Infectious Disease (Notification) Act, 1889...541; Infectious Disease (Prevention) Act, 1890... 549; Museums and Gymnasiums Act, 1891...1285; Public Health Acts Amendment Act, 1890...561; Private Street Works Act, 1892...680.
- of meeting of owners and ratepayers, 439.
- as to new streets and buildings, bye-laws may provide for, 205; authority to approve or disapprove within month after notice, 217.
- of objection to construction of sewage works without district, 62, 63; to construction of reservoir, 81.
- as to orders under section 57 of Local Government Act, 1888, order of Local Government Board prescribing, 1388.
- to overseers of apportionment of expenses common to two or more contributory places, 309.
- on owners, lessees, and occupiers—of lands proposed to be compulsorily acquired, 246; of lands proposed to be acquired compulsorily under Part I. of Housing of Working Classes Act, 1890...603; under Part II. of that Act, 628; as to proceedings for compulsory acquisition of lands for allotments, 704.
- to owner—of infectious disease, on determination of tenancy, 554; of proposal to make demolition order, 620; as to certain works under Towns Improvement Clauses Act, 1847...723; requiring disinfection of bedding, &c., 553; requiring provision of water supply to house in rural district, 457, 463.
- to owner or occupier—of intention to construct sewer through his lands, 38; of intention to enter on lands, 400; requiring cleansing and disinfection of premises or articles, 141, 552, 553; requiring drainage of undrained house, 54; requiring paving, &c. of private street, 176; form of such notice, 445; requiring provision of privy or ashpit accommodation, 64, 66; requiring provision of sanitary conveniences to manufactory or workshop, 576; requiring purification of house, 73; requiring supply of water to house, 88, 457; requiring works for removal of nuisance created by drains, privies, &c., 68.
- to parish council—of adoption of plan for sewage or water supply, 714; of proposal to alter area of parish, 734.
- as to periodical removal of manure, &c., 76.
- of poll of owners and ratepayers, 433, 434.

INDEX.

NOTICE—*continued.*

- printing of, 358.
- of prohibition of supply of milk to be given to sanitary authority, county council and Local Government Board, 550.
- of proposal to alter boundary of county, district, or parish, 517, 1388.
- of purport of provisional orders to be advertised, 391; of purport of order of county council altering boundaries, 518, 1388.
- of reconstruction scheme dealing with unhealthy houses, 628.
- requiring—abatement of nuisance, 115; form of such notice, 441; alteration of situation of gas or water pipes in streets, 200; removal of stagnant water from dwelling-house, 74.
- service of—mode of, 359; under Part II. of Housing of Working Classes Act, 1890...639; on local authority under Housing of Working Classes Act, 1890...654.
- to treat under 8 & 9 Vict. c. 18...812.
- of undertaking in respect of which lands proposed to be taken compulsorily, 246.
- to water company having parliamentary powers of proposal to construct water works, 79.

NOTICE BOARDS,

- penalty for destroying or defacing, 401.

NOTIFICATION,

- of infectious disease, 539; saving for local Act provisions as to, 545; general order of Local Government Board prescribing form of certificate for, 1429.

NOXIOUS

- matters, removal of, on notice by inspector of nuisances, 75.

NUISANCE from

- accumulations, 108.
- animals, 108.
- ashes, 72.
- ashpits, 68, 108.
- cemetery, 900.
- cesspool, 68, 108.
- chimney, 108.
- ditches, 108.
- drains, 68, 108, 573.
- dust, 72, 108.
- earth closets, 68.
- factories, 108.
- filth, 72.
- fireplace or furnace, 108.
- gas, 866, 867.
- house refuse, 72.
- infectious diseases hospital, 110 *n.*
- manure, 75.
- offensive trade, 134—136.
- overcrowding, 108.
- overflow from cesspool, &c., 74.
- pigsty, 74.

NUISANCE from—*continued.*

- pool, 108.
- privies, 68, 108.
- rubbish, 72.
- sanitary convenience used in common, 576.
- sewage disposal works, 58, 61, 109 *n.*
- sewers, 50.
- slaughter-house, 134.
- smoke, 108, 115.
- snow, filth, &c., 72.
- in streets, 235, 908—914.
- swine keeping, 74.
- tents or vans, 484.
- unfenced or disused coal shafts and quarries, 114 *n.*
- urinal, 108.
- vapours from factories, &c., 108.
- on village greens, 114 *n.*
- water dripping from railway bridge, 109.
- water-closets, 68.
- watercourse, 75, 108.

NUISANCES,

- abatement of certain, 74.
- abatement of—duty of local authority as to, 115; notice requiring, to be given by local authority, 115; form of such notice, 441; complaint to justice on non-compliance with such notice, 119; order of Court as to, 120; form of order of Court, 442; penalty for contravention of order, 122; sale of materials removed by local authority in execution of order, 123; proceedings for, in superior Court, 128; proceedings for, when caused by several persons, 338.

INDEX.

NUISANCES—*continued.*

bye-laws under Municipal Corporations Act for prevention and suppression of, 259, 1132, 1133.
cause of, arising without district, 128.
complaint as to, by individuals, 126.
costs and expenses of local authority in executing provisions as to, 125.
definition of, liable to be dealt with summarily, 108 *et seq.*
entry upon premises to examine into, 124.
examination of drains, privies, &c. on complaint of, 68, 573.
information as to, to local authority, 115.
inspection of district for detection of, 115.
penalty for certain, 74.
police officers may be empowered to take proceedings against, 127.
powers of parish council as to, 703.
recurrence of, complaint to justice as to, 119; order of Court as to, 120; form of order of Court as to, 442; penalty for non-compliance with order, 122; proceedings as to, when nuisance caused by several persons, 338.
saving for other remedies against, 130.
on ships, 129, 130, 477.
in streets, 235, 908—914.

NUMBERING,

of houses, 223, 888.

NURSERY GROUNDS,

assessment of, to general district rate, 283; to special expenses rate, 311.

OBJECTIONS to

accounts, powers of owner and ratepayer to make, at audit, 327.
constitution of local government district, 375.
construction of reservoir, 81.
private street works, 683—685, 687.
private street being made highway, 198, 590.
sewage works without district, 62, 63.
validity of vote for resolution as to constitution of local government districts, 375, 376.

OBSCENE

books and pictures, penalties in connection with, 913.

OBSTRUCTING

execution of Public Health Act generally, 401; execution of Housing of Working Classes Act, 1890...639, 640, 654; execution of order for removal to hospital of infectious disease patient, 143; execution of order for removal or burial of body, 154.
officer—in executing provisions as to tents and vans, 484; in executing search warrant or inspecting meat, 140.

OBSTRUCTION of

highways, costs of proceedings as to, 491 *n.*
right of way, powers of county, district, and parish councils, as to, 725, 726.
street—incorporation of provisions of 10 & 11 Vict. c. 89, as to, 235; text of those provisions, 908—914; incorporation of provisions of 10 & 11 Vict. c. 34, as to removal of, 223; text of those provisions, 888—891.

OBSTRUCTIVE BUILDINGS,

apportionment among adjoining buildings of increased value caused by demolition of, 626.
compensation for demolition of, or purchase of site of, 625, 626.
copy of representation and report as to, to be sent to owner, 625.
order for demolition of, 625; appeal against order, 625.
powers of county councils as to, 634, 635.

INDEX.

OBSTRUCTIVE BUILDINGS—*continued.*

- purchase of site of, by local authority, 625, 626.
- report as to, 624.
- representation as to, 624; by parish council, 701.
- site of, may be retained by owner, 625; utilization of site of, 627.

OCCUPATION of

- cellar dwellings, definition of, 99; prohibition of, 97.
- existing cellar dwellings, conditions of, 97.
- house without drains, prohibition of, 57.
- new dwelling-house in rural district without sufficient water supply, prohibition of, 461.

OCCUPIER,

- ashpit may be required to be provided by, 63, 64.
- cleansing and disinfection of premises by, 141, 551, 552.
- compensation may be paid to, for expenses of removal, 651.
- costs of, in opposing improvement schemes, 605, 606.
- deduction from rent of proportion of private improvement rates paid by, 292;
 - of rentcharge paid by, in respect of private improvement expenses, 322.
- definition of, 545.
- description of—in notices, orders, &c., 359; in proceedings against nuisances, 338; in proceedings under Part II. of Housing of Working Classes Act, 1890...639; in rates, when unknown, 300.
- drainage of houses by, power to enforce, 54.
- of factory may be required to provide privy accommodation, 66.
- notice to be given to—of intention to construct sewer through his lands, 38; of intention to enter on lands, 400; of intention to take fifteen or more houses under Housing of Working Classes Act, 1890...609; of intention to construct sewage works without district, 62; of lands proposed to be acquired compulsorily, 246, 603, 628; as to proceedings for compulsory acquisition of lands for allotments, 704.
- nuisance may be required to be abated by, 115.
- objection by, to sewage works without district, 62.
- paving, &c. of private streets by, power to compel, 176.
- penalty on, for refusing to state or misstating name of owner, 401; for preventing owner executing works, 401.
- of polluted well, proceedings against, 96.
- private improvement rate may be redeemed by, 293.
- privy accommodation may be required to be provided by, 63, 64.
- purification of house by, power to enforce, 73.
- rating of, instead of owner, to general district rate, 282, 283.
- recovery from, of costs and expenses recoverable from owner, 125, 341, 342.
- repair by, of vaults, &c. under streets, 586.
- right of, to connect drain with sewer, 51.
- service on, of copy of compulsory purchase order, 247, 704; of notices, orders, &c., 359; of Provisional Order confirming improvement scheme, 605; of notice of scheme for reconstruction of unhealthy houses, 628.
- successive, rating of, to general district rate, 283.
- supply of water may be required to be provided by, 88.
- without district, right of, to use of sewers, 53.
- works for removal of nuisance created by drains, privies, &c. may be required to be made by, 68.

OFFENCES. *See also* PENALTY.

- against—bye-laws as to streets and buildings, 217; what is a continuing offence, 217; bye-laws as to wires, 568; Housing of Working Classes Act, 1890...654; Infectious Disease (Prevention) Act, 1890...537, 538; licences as to music and dancing, 598; provisions as to hoardings, 585; provisions as to means of ingress and egress, 587; provisions as to safety of platforms, &c., 588.
- against orders and regulations as to dairies, cowsheds, and milkshops, 487.
- against Public Health Acts Amendment Act, 1890, prosecution of, 563.

INDEX.

OFFENCES—*continued.*

at elections. *See* CORRUPT AND ILLEGAL PRACTICES.
prosecution of, summarily, 333.
under Sale of Food and Drugs Acts, 1007—1010.
under Tramways Act, 1870...964, 965.

OFFENSIVE

ditches or watercourses, cleansing of, 75.
matter, buildings not to be erected on ground filled up with, 580.
matters, removal of, on notice by inspector of nuisances, 75; bye-laws as to
removal of, 580, 581.
trades—bye-laws as to, 134; nuisances arising from, 134, 135, 136; restriction
on establishment of, 131.

OFFICE,

definition of term, 529.

OFFICERS,

compensation of, for loss of office or emoluments, 408; provisions of Local
Government Act, 1894, as to, 768, 769.
disqualification of, for office as member of authority, 739.
existing, provisions of Local Government Act, 1894, as to, 768.
of local authority—260—271; accountability of, 269; audit of accounts of, 331,
754; appearance of local authority in proceedings by, 349; contracts
of, with local authority, 265, 481; corruption in office by, 535 *et seq.*;
defaulting, summary proceedings against, 269, 270; entry on premises by,
124, 400; penalty on, for taking fee or reward under colour of office, 265,
476; protection of, from personal liability, 352; protection of, when acting
in execution of statutory or other public duty, 692 *et seq.*; saving for
existing, 414; security to be given by, when, 267.
parochial committees not to appoint, 274 *n.*
of rural authority, appointment of, 263.
union, grants by county councils towards cost of, 506.
of urban authority—appointment of, 260; regulations as to duties and conduct
of, 260; remuneration of, 260; tenure of office of, 260.

OFFICES,

parochial, provision of, by parish council, 701.
rural authority may use offices of guardians, 755.
of urban authority, provision of, 271.

OFFICIAL

representation as to unhealthy areas—appeal of ratepayers to confirming
authority on default of medical officer to make, 610; inquiry by confirming
authority into, 611; inquiry by confirming authority on refusal of local
authority to make scheme after, 606; making of, 601, 652; by whom to
be made, 602; limit of area in London to be dealt with in, 648.
sanction, issue of loans under, 1025.

OMNIBUS. *See also* CONVEYANCE, PUBLIC.

bye-laws as to, 1261, 1262.
certain provisions as to hackney carriages to apply to, 1261.
conductor of, included in term driver, 1261.
definition of, 1260.

OPEN SPACES,

acquisition and holding of, by local authority, 1072, 1213.
application of Acts to spaces partly within and partly without district, 1275.
appropriation by sanitary authority of land for, 1214.
bye-laws as to, 1114, 1214; bye-laws as to paying of, 578.
compensation for injuriously affecting interests in, 1114.
dedication as, of site of obstructive building, 627.
duties of local authority as to, 1113, 1213.
expenses of sanitary authority as to, 1214.
free gifts of land for, 1214.

INDEX.

OPEN SPACES—*continued.*

improvement and regulation of, by parish councils, 703.
maintenance and protection of, 1073.
right of entry to, may be conveyed to local authority, 1073, 1213.
in squares or streets, protection of, 933, 934.
text of Metropolitan Act of, 1877...1072; of Metropolitan Act of 1881...1110—
1114; of Act of 1887...1212; of Act of 1890...1274.
transfer of, to local authority, 1111—1113, 1213; when held by trustees, 1274,
1275.

OPPOSITION to,

Bill in Parliament, by local authority, consents and approvals required to,
1001, 1002.
Provisional Orders, costs of, 393.
Provisional Order confirming improvement scheme, costs of owners, &c. in
relation to, 605, 606.
Provisional Order under section 24 of Railway and Canal Traffic Act, 1888, by
urban authority, 1284.

ORCHARDS,

rating of, to general district and special expenses rates, 548.

ORDERS. *See also* GENERAL ORDERS, REGULATIONS AND RULES.

closing, under Part II. of Housing of Working Classes Act, 1890—county
council may obtain, when, 634, 635; definition of, 618; form of, 676;
penalty for non-compliance with, 620; proceedings by local authority to
obtain, 619, 620, 673, 674; service of, 620.
in Council, confirming regulations as to stock, 600.
of county council generally—copy of, to be sent to Local Government Board
and Board of Agriculture, when, 763; for amending previous scheme or
order, 520; under Local Government Act, 1888, matters which may be
provided for, in, 519, 520.
of county council, as to—alteration of area or definition of boundary of urban
or rural districts or parishes, 516, 517; areas and boundaries, time for
petitioning against and validity of, on confirmation, 736; areas and bound-
aries, how notice of, to be given, and copies supplied, 518, 1388; alteration
of area in which adoptive Act in force, 750; charities or custody of docu-
ments of parishes divided by Local Government Act, 1894...734; the
compulsory acquisition of land by parish councils or for allotments,
705—708; the constitution of isolation hospital district, 1341; limiting
time for performance of duty by defaulting district council, 714; post-
poning transfer to rural district council of highway powers, 723; retire-
ment of guardians, 719; retirement of urban district councillors, 720.
generally—authentication of, 358; not to be quashed for want of form, or to
be removed into High Court, 350; mode of service of, 359; may be printed
or written, 358.
of justice, for—burial of dead body, 555; destruction of unsound meat, &c.,
138, 582; detention in hospital of infected person without proper lodging,
556; entry of local authority on premises, 124, 126; form of such order,
444; removal of infected person to hospital, 143; removal to mortuary
and burial of body of infected person, 154, 155.
of local authority, for—demolition of dwelling-house unfit for habitation, 620,
621, 653; demolition of obstructive building, 625, 653; execution of works
to render dwelling-house fit for habitation, 621; prohibiting supply of
milk from dairy, 550.
of Local Government Board generally—finality of, 389; publication of, 389,
456; matters which may be provided for in, under Local Government
Act, 1888...519, 520.
of Local Government Board, as to areas, boundaries and districts—altering areas,
general provisions as to, 376, 377; altering boundaries of electoral division,
516; confirming order of county council as to areas and boundaries, 518;
constituting local government district in pursuance of resolution of owners
and ratepayers, 373; constituting port sanitary authority, 384; dissolving
special drainage district, 371; settling boundaries of places, 373, 379;

ORDERS—continued.

- of Local Government Board, as to areas, &c.—*continued.*
 - uniting districts for purposes of appointment of medical officer of health, 382, 383; as to validity of vote for resolution for constituting local government district, 375, 376.
- of Local Government Board—allowing or disallowing sewage works without district, 63; allowing or disallowing construction of reservoir, 81; as to appointment of charity trustees in urban district divided into wards, 731; awarding compensation for loss of office or emoluments, 408; combining authorities for purposes of prevention of epidemic diseases, 153; as to compulsory acquisition of lands for allotments or by parish council, 705—708; conferring upon urban district council or other representative body power of appointing overseers or assistant overseers, or powers, &c. of overseers or parish council, or powers of vestry under Poor Rate Assessment and Collection Act, 1869...730—732; determining appeal against apportionment of expenses common to two or more contributory places, 309; determining appeal as to private improvement expenses, 360; determining appeal by owner against requirement of rural authority as to supply of water, 460; as to expenses of executing duty of defaulting authority, 394, 395; fixing scale of charges for water supply, 88, 462; investing rural authority with urban powers, 378, 562, 681, 725; as to joint appointment of medical officer of health or inspector of nuisances, 263; limiting time for performance of duty by defaulting authority, 394; sanctioning scheme of reconstruction under Part II. of Housing of Working Classes Act, 1890...628.

provisional. *See* PROVISIONAL ORDERS.

- of summary jurisdiction court—appeal to quarter sessions from, 363 *et seq.*; as to apportionment of cost of works of water supply to more than one house, 460; authorising execution by rural authority of works of water supply to house, 459; for cleansing of offensive ditch, 75; for closing cellar dwellings, 99; for closing dwelling-house unfit for habitation, 121, 122, 619, 620, 676; for closing house on two convictions for overcrowding, 129; for closing polluted well, 96; for commitment of defaulting officer, 270; as to dangerous telegraph, &c. wire exempted from bye-laws, 569; authorising entry on lands, 400; as to nuisances, 120, 122, 123, 127; form of order as to nuisances, 441, 442; as to nuisance from offensive trade, 134; as to occupation of house on refusal of rural authority to give certificate as to water supply, 461; for payment of rates, 339; requiring occupier to permit owner to execute works, 401; form of such order, 444.

ORNAMENTAL GROUNDS,

- in squares or streets, protection of, 933.

OVERCROWDING

- of house, 108; closing of house on two convictions for, 129.
- of tent or van used for habitation, 484.

OVERSEERS,

- accounts of, for purposes of Public Health Act, audit of, 331.
- appeal of, against apportionment of expenses of works common to two contributory places, 309.
- appointment of—by parish council, 700; by urban district council or other body in urban district, 730, 731; by guardians on failure of parish or urban district council to notify, 748.
- appointment of trustees of parochial charity in place of, 711.
- churchwardens to cease to be, in rural parish, 700.
- of contributory places not co-extensive with parish, who to be, 311.
- deposit with, of bye-laws of rural authority, 258.
- notice to be given to, of intention to construct sewage works without district, 62.
- objection by, to sewage works without district, 62.
- powers of—may be conferred on urban district council or other representative body, 730; with respect to special expenses and separate rates, 311.
- precept to—for contribution to expenses of rural authority, 310, 311; recovery by rural authority of sums due under, 313.
- transfer to parish council of certain powers of, 701.

INDEX.

OWNERS,

- adoption of private streets may be required by, on execution of private street works, 690.
- appeal of—as to expenses recoverable summarily, and of private improvement expenses, 360; against requirement of rural authority as to supply of water, 459, 460.
- apportionment upon—of expenses of constructing new sewer, 54; of costs of private street works, 176, 682, 686, 687.
- ashpit may be required to be provided by, 63, 64.
- borrowing by limited, for purposes of private street works, 689.
- claims of, to be entered on register, 433; form of claim, 447; notice as to making of claims, form of, 446.
- cleansing and disinfecting of premises by, 141, 551, 552.
- compensation of, for loss or damage sustained by alteration of building line in street, 201.
- costs of, in opposing improvement schemes, 605, 606.
- definition of, 6—11; for purposes of resolutions of owners and ratepayers, 430; for purposes of Part II. of Housing of Working Classes Act, 1890...617.
- description of—in notices, orders, &c., 359; in proceedings against nuisances, 338; in proceedings under Part II. of Housing of Working Classes Act, 1890...639; in rates, when unknown, 300.
- drainage of houses by, power to enforce, 54.
- of dwelling-house—not in receipt of rents and profits may require notice of proceedings under Part II. of Act of 1890 to be given to owner in receipt, 637, 638; execution by, of works under Part II. of Act of 1890 where owner proceeded against has made default, 638.
- execution of works by, penalty on occupier for preventing, 401.
- of factory may be required to provide privy accommodation, 66.
- grant to, of charges by way of annuity on completion of works for rendering dwelling-house fit for habitation, 622—624.
- name of, penalty on occupier for refusing to state, or misstating, 401.
- notice to be given to, of—infectious disease on determination of tenancy, 554; intention to construct sewer through his lands, 38; intention to enter on lands, 400; intention to construct sewage works without district, 62; improvement schemes, 603; lands proposed to be acquired compulsorily, 246, 603, 628; proposal to make demolition order, 620; proceedings for compulsory acquisition of land for allotments, 704.
- nuisance may be required to be abated by, 115.
- objection by—to sewage works without district, 62; to private street becoming highway, 198, 690.
- paving, &c., of private streets by, power to compel, 176.
- of polluted well, proceedings against, 96.
- private improvement rate may be redeemed by, 292.
- privy accommodation may be required to be provided by, 63, 64.
- of public conveyances, penalty on, for failure to disinfect, 146, 556.
- purification of house by, power to enforce, 73.
- rating of occupier instead of, to general district rate, 282, 283.
- recovery from, by local authority, of expenses, 341, 342.
- recovery from occupier of costs and expenses recoverable from, 125, 341, 342.
- repair by, of vaults, &c., under streets, 586.
- remedies of, for breach of covenants, &c., not to be prejudiced by proceedings under Part II. of Housing of Working Classes Act, 1890...639.
- retention by, of site of obstructive building, 625.
- right of, to connect drain with sewer, 51.
- service on, of—compulsory purchase order, 247, 704; notices, orders, &c., 359; provisional order confirming improvement scheme, 605; notice of scheme for reconstruction of unhealthy buildings, 628; representation and report as to obstructive building, 625.
- supply of water to house may be required to be provided by, 87, 88; in rural district, 457.
- voting of, when also ratepayer, 432; personally or by proxy, 433.
- without district, right of, to use of sewers, 53.
- works for removal of nuisance created by drains, privies, &c., may be required to be made by, 68.

OWNERS AND RATEPAYERS,

- appeal of, as to validity of vote for constitution of local government district, 375, 376.
- attendance of, at audit, 327.
- consent of, to provision of market, &c., 229.
- may decide that excluded part of parish shall cease to be part of urban district for highway purposes, 294.
- meetings of—chairman of, 439; costs of, 441; poll may be demanded at, 440; proceedings at, 440; security may be required to be given by requisitionists of, 439; summoning of, 438; summoning officer of, 439; scale of votes at, 432; voters at, who are, 430.
- objections by, to accounts at audit, 327.
- poll of—costs of, 441; may be demanded at meeting, 440; inspection of rate-books, &c. for purposes of, 434; notice of, 433, 434; penalties for offences at, 437; returning officer at, who to be, 440; how to be taken, 440; scale of votes at, 432; voting at, when district divided into wards, 430; voters at, who are, 430; alphabetical list of voters at, may be made, 434; voting papers at, 434, 435; form of voting paper, 449.
- promotion of or opposition to bill in Parliament requires sanction of, 1001.
- resolutions of, for constitution of local government district, 373; objections to resolution, 375; rules as to, 438—441.

OXFORD,

- constitution of local board of, 423, 424.

PARISH,

- alteration of boundary of, 516, 517, 519, 734, 735.
- to be in one county and county district, 733.
- in more counties than one, alteration of area of, to be by joint committee, 735.
- definition of, 4, 526, 764.
- divided by Local Government Act, 1894—charities and custody of documents of, 734; new parishes to be in union of original parish, 734; number of guardians and rural district councillors for new parishes, 766; officers of, 768; power to deal with certain matters arising out of division, 761.
- division or union of, 516, 517.
- division of, into wards for election purposes, 756, 757.
- excluded part of, to be deemed part of urban district for highway purposes, when, 294; to cease to be part of urban district when rural authority becomes highway authority, 295 *n*, 724.
- and rural district coincident, rural district council to be parish council, 734.
- saving for powers of Local Government Board as to alteration of, 519.
- union of, for purposes of election of guardians or rural district councillors, 756, 757.
- in more urban districts than one, each part to be separate parish, 733, 734.

PARISH COUNCIL,

- accounts of, 754.
- acquisition of lands by, 704 *et seq.* See also COMPULSORY ACQUISITION, &c.
- application of, for conferring urban powers on rural district council, 725.
- appointment of, or of members of, as parochial committee, 713.
- appointment by, of overseers and assistant overseers, 700, 701, 748; of trustees of parochial charity, 711, 712.
- committees of, 752, 753.
- complaint by, as to default of rural district council, 713.
- conferment upon urban district council of powers of, 730.
- consent of, to declaration that highway unnecessary for public use, or to stopping or diversion of right of way, 709, 710.
- delegation to, of powers of parochial committees, 274 *n*, 713.
- joint committees of, and other bodies, 753.
- notice to, of—application to Board of Agriculture as to common, 704; plans for sewerage or water supply, 714; proposal to alter area of parish, 734.
- parochial committees to consist partly of members of, when, 274 *n*, 713.

PARISH COUNCIL—*continued*.

- petition of, to Local Government Board against refusal of county council to make compulsory purchase order, 705; against order of county council altering parish, 735.
- powers of, as to—accepting and holding gifts of property, 703; acquisition of rights of way, 703; appeals against valuation lists, poor rate or county rate or basis, 701; applications to Board of Agriculture as to common, 703; charity schemes, 712; contribution towards certain expenses, 704; execution of works, 703; footpaths, 711; holding or management of parish property, village greens or allotments, 701; improvement and regulation of recreation grounds, village greens, &c., 703; nuisances, 703; provision or acquisition of lands and buildings, 702; protection of rights of way and roadside waste, 726; provision of parish books, vestry room, parochial office, parish chest, fire-engine, &c., 701; provision or acquisition of recreation grounds and public walks, 702; representations as to allotments, and applications for appointment of allotment managers, 702; representations as to unhealthy dwellings or obstructive buildings, 701; sale, exchange, or letting of parish property, 701, 703; water supply, 703.
- representation by, as to inability to acquire lands by agreement, 704.
- transfer to, of—legal interest in parish property, 700; powers, &c. under adoptive Acts, 749; powers, &c. of allotment managers, wardens, &c., 702; powers, &c. of churchwardens, 700; powers, &c. of guardians as to parish property, 701; certain powers of overseers, 701; powers &c. of vestry, 700; public property held by trustees, 711.

PARISH COUNCILLOR,

- disqualifications for office of, 739—744; removal of disqualification in certain cases, 742.
- vacancy in office of, declaration and notification of, 743, 744.
- vacation of office of, by absence from meetings, 743.

PARISH MEETING,

- accounts of parochial charities to be laid before, 712.
- notice to, of proposal to alter area of parish, 734.
- may petition against order of county council altering area of parish, 735.

PARISH PROPERTY,

- holding or management of, by parish council, 701.
- legal interest in, transferred to parish council, 700.
- maintenance and improvement of, by parish council, 703.
- sale, exchange, or letting of, by parish council, 701, 703.

PARK. *See also* PLEASURE GROUNDS.

- boating on waters in, 591.
- closing of, to public, 227 *n*, 591.
- exemption of assurance for, from Mortmain and Charitable Uses Act, 1888... 1231.
- grant of use of, for shows, &c., 591.
- provision of, by urban authority, 227 *n*.

PARLIAMENT,

- confirmation by, of provisional orders, 391; of provisional order confirming improvement scheme, 605, 606; of provisional order under Allotments Act, 1219.
- opposition to or promotion of Bill in, sanction and approvals required to, 1001, 1002.
- orders of county councils when confirmed to be laid before, 518.
- regulations of Local Government Board as to stock to be laid before, 600.

PARLIAMENTARY

- county, election, and voters, definition of, 526, 527.

INDEX.

PARLIAMENTARY REGISTER OF ELECTORS,

- consists of whom, 737 *n*.
- and local government register together form register of parochial electors, 737.

PAROCHIAL CHARITY,

- accounts of, 712.
- decision of questions as to, 762.
- definition of, 765.
- order as to, when parish divided by Act, 734.
- schemes relating to, 712.
- trustees of—appointment of, by parish council, 711, 712; appointment of, in borough or other urban district divided into wards, 731; not to be beneficiaries, 712; term of office of, 712.

PAROCHIAL COMMITTEES,

- to be agents of rural authority, 293.
- appointment of, 273; appointment of parish councillors as member of, 274 *n*, 713.
- constitution of, 273.
- delegation to parish council of powers which might be delegated to, 713.
- expenses may be incurred by, when, 273.
- officers not to be appointed by, 274 *n*.
- parish council acting as, to have services of clerk to rural district council, 714.
- powers and jurisdiction of, 273.
- vacancies in, 274.

PAROCHIAL ELECTORS,

- to be electors—of guardians, 716; of urban district councillors, 720.
- inspection by, of accounts of rural district council, 755.
- list of, claims for entry on, &c., 739; names in list to form part of register of parochial electors, 739.
- register of. *See* REGISTER OF PAROCHIAL ELECTORS.
- who are, in urban district, London, or county borough, 764.
- women not disqualified as, 737.

PARTNERS,

- voting of, at meeting and poll of owners and ratepayers, 433.

PARTY WALL,

- meaning of term in bye-laws, 214 *n*.

PASSAGE,

- common, cleansing of, 581.
- street includes, 12.

PASSAGE BROKERS,

- to enter into bond and obtain licence, 1347.
- licensing of, 1347; by district council, 727; by county borough council, 730; forfeiture of licence, 1347; form of licence, 1352.
- who are, 1346.

PATIENT,

- charges for maintenance of, in hospital under Isolation Hospitals Act, 1893... 1342, 1343.
- recovery of cost of maintenance of, in hospital, 150.

PAVEMENTS,

- cleansing of, power to make bye-laws as to, 71.
- vesting of, in urban authority, 169.

PAVING of

- highways, 169.
- open spaces about buildings, 578.
- private streets, 176, 681. *See also* PRIVATE STREET WORKS.
- streets, 565.

INDEX.

PAWNBROKERS ACT, 1872,

- certificate by district or county borough council required before grant of licence under, 727, 730, 1003, 1004.
- definitions in, 1002, 1003.
- Inland Revenue licences under, 1003.

PENALTIES (GENERALLY),

- application of, 337.
- under 6 Geo. IV. c. 78, power to reduce, 454.
- under incorporated Acts, recovery and application of, 410.
- recovery of, by companies, 805—807.
- recovery of, under Public Health Act, 1875—summary proceedings for, 333, 336; restriction on, 336; not to be recoverable under both Public Health Act and other Act, 423.
- recovery of—under Gas Works Clauses Act, 1847...870; under Housing of Working Classes Act, 1890...654; under Lands Clauses Acts, 840—842; under Public Health Acts Amendment Act, 1890...563; under Railways Clauses Consolidation Act, 1845...843—846.

PENALTY for

- breach of bye-laws, 257.
- breaking up streets without consent, 169.
- building or rebuilding house without drains, 57; without sufficient water-closet, privy, or ashpit accommodation, 63, 64; for building vaults, &c. under carriage-way of streets, 58; for building beyond line of adjoining building, 204, 531; for building over sewer, without authority, 57, 58; for building on ground filled up with offensive matter, 580.
- communication of drain with sewer, improperly carried out, 52.
- contravention of order of Court as to nuisance, 122, 125.
- corruption in office by member or officer of public body, 536.
- damage to works or property of local authority, 402.
- destroying or defacing notice boards, &c., 401, 592.
- disobedience to—closing order, 620; order of Court as to entry upon premises, 125; order of justice as to removal to hospital of infected person, 143.
- erecting sanitary convenience accessible to street without consent, 575.
- establishing offensive trade without consent, 131.
- exposing infected persons or articles, 144, 145; exposing unsound meat for sale, 138.
- failure or neglect to comply with notice—as to abatement of nuisance, 120, 125; as to cleansing and disinfecting of premises, &c., 141; as to disinfection of bedding, 553; as to periodical removal of manure, 76; as to provision of privy or ashpit accommodation for factory, 66; as to purification of house, 73; requiring execution of works for removal of nuisance created by drains, privies, &c., 68; as to sanitary conveniences, 577.
- failure or neglect—to affix notice of licensing or registration on slaughter-house, 235; to affix notice as to registration of common lodging-house, 102; to notify infectious disease, 540; to register transfer of mortgage, 320.
- fouling water by gas washings, 94, 866.
- injuring water meter, 86, 87.
- on keeper of common lodging-house, for—failure to affix notice of registration, 102; failure to give notice as to infectious disease, 584; offences generally, 104, 105; refusing to allow inspection, 104.
- letting or occupying cellar dwelling contrary to Act, 98; for letting infected house, 146; for making false statement as to infectious disease on letting house, 147.
- on local authority, for neglect to remove house refuse, or cleanse earth-closet, privy, &c., 71.
- certain nuisances on premises, 74; for nuisance from offensive trade, 134.
- obstructing—execution of Public Health Act generally, 401; execution of Housing of Working Classes Act, 1890...639, 640, 654; execution of order for removal to hospital of infectious disease patient, 143; execution of order for removal or burial of body, 154; execution of search warrant, 140; execution of provisions as to tents and vans, 484; officer in inspecting meat, &c., 140; removal of house refuse, &c., 70.

INDEX.

PENALTY for—*continued*.

- occupation as dwelling-house of premises not planned as such, 585; for occupation of new house in rural district without certificate as to water supply, 461.
- on occupier, for refusing to allow owner to execute works, 401; for misstating or refusing to state name of owner, 401.
- offences against—bye-laws as to wires, &c., 568; Infectious Disease (Prevention) Act, 1890...557, 558; licences as to music and dancing, 598; provisions as to hoardings, 585; provisions as to means of ingress and egress, 587; provisions as to safety of platforms, &c., 588.
- offences against regulations—as to dairies, cowsheds, and milkshops, 487; as to epidemic diseases, 147, 153; as to removal of infected person to hospital, 144.
- offences at elections. *See* CORRUPT AND ILLEGAL PRACTICES.
- offences at poll of owners and ratepayers, 437.
- on officers, for—being concerned in contract with local authority, 265, 481; neglecting to make up accounts or refusing to allow inspection, 327; non-production to auditor of books, &c., or for making false declaration as to accounts, 327; taking fee or reward under colour of office, 265, 476, 536.
- overflow or soakage from water-closet, privy, or cesspool, 74.
- refusal to allow inspection of register of mortgages, 320; of poor-rate books for purposes of general district rates, 291; of urban rates, 299.
- removal from hospital of infected body except for burial, 555.
- on returning officer for offences at poll of owners and ratepayers, 437.
- stagnant water in dwelling-house, 74.
- swine keeping in urban districts, 74.
- turning into sewer chemical refuse, steam, &c., 571, 572.
- using as dwelling-house building not erected for purpose, 222 *n*, 584, 585.

PENSION,

- definition of, 528.

PENTONVILLE PRISON,

- sale of, to Metropolitan Board of Works, 483.

PERIOD

- for repayment of loans, 316, 317.

PERIODICAL PUBLICATIONS,

- memorandum of Local Government Board as to purchase of, 1373.

PERJURY,

- punishment of false evidence as, 351.

PERMANENT

- works, loans to be for purposes of, 315.

PERSON,

- definition of, 6, 527.

PERSONATION,

- definition of, 1134, 1196, 1197. *See also* CORRUPT AND ILLEGAL PRACTICES.

PETITION,

- against bill to confirm provisional order, 391, 606, 1219.
- election. *See* ELECTION PETITION.
- to Local Government Board—for confirmation of improvement scheme dealing with unhealthy area, 629; for compulsory purchase order, 246; against order of county council altering areas and boundaries, 518, 736; against order confirming reconstruction scheme dealing with unhealthy houses, 629; against refusal of county council to make compulsory purchase order for allotments, 705; of owners and ratepayers objecting to constitution of local government district, 375; for settlement of boundaries of place, 373.

INDEX.

PETROLEUM,

- application to other substances of Acts as to, 994.
- bye-laws as to ships carrying, 990.
- definitions in Act of 1871...990.
- district council to be local authority under Acts as to, 727.
- hawking of, 1125, 1126.
- labels on vessels containing, 991.
- licences to keep, 991, 992, 1126.
- penalty for obstructing officer, 993.
- search warrant for, 993.
- testing of, 991, 1106—1108.
- text of Act of 1871...989; of Act of 1879...1106; of Hawkers Act of 1881...1125.

PIG-STY,

- penalty for keeping, so as to be nuisance, 74.

PIPES for

- gas supply—alteration of situation of, may be required by urban authority, 200; breaking up of streets for laying of, 863—865.
- water supply—alteration of situation of, may be required by urban authority, 200; breaking up of streets for laying of, 84, 876, 877; communication, 84, 878, 879.

PLACARD,

- penalty for damaging or defacing, 592.

PLAN,

- deposited, buildings described on, as other than dwelling-house, not to be used as such, 584, 585.
- entry on land for purposes of making, 400.
- of new street or building—approval or disapproval to be signified within a month of deposit of, 217; bye-laws may provide for deposit of, 205; retention of, by local authority, 216 *n*.
- of private street works, 176, 682, 683, 686, 692.
- of sewerage works without districts, to be open to inspection, 62.
- of sewerage works or water supply, notice of, to parish council, 714.
- of undertaking, for which lands proposed to be acquired compulsorily, 246; deposit of, in parliamentary offices under standing orders, 248 *n*.

PLATFORMS

- used on public occasions, safety of, 588.

PLEASURE

- boats—bye-laws as to, 236; licensing of proprietors and boatmen of, 236; mooring places for, 236.
- grounds—provisions as to, 226—229; boating on waters in, 227 *n*, 591; closing of, to public, 227 *n*, 591; contribution by urban authority towards cost of, 591; grant of use of, for shows, &c., 591.

POLICE,

- chief officer of, definition of, 599.
- district, definition of, 599.
- employment of borough police as fire brigade, 1334.
- force, abolition of, in borough with population under 10,000...513.
- information of nuisance by, 115.
- officer may be empowered to proceed against nuisance, 127.
- superannuation fund, payment to, of fines awarded to constables, 338 *n*.
- text of certain provisions of the Act of 1893...1334.

POLL

- at elections regulated by rules under Local Government Act, 1894, to be by ballot, 745; days and hours of, 744; to be taken together in certain cases, 744; term election includes poll, 765.
- at elections of rural district councillors, 1469 *et seq.*; of urban district councillors, 1443 *et seq.*
- of owners and ratepayers. *See* OWNERS AND RATEPAYERS.

INDEX.

POLLUTED

well, closing of, 96.

POLLUTION OF STREAMS, &c.

by discharge of unpurified sewage, 40 *et seq.*

powers of county council to enforce Rivers Pollution Prevention Act as to, 499. *See also* RIVERS POLLUTION PREVENTION ACT, 1876.

proceedings for prevention of, 96.

POND,

fouling of, by gas washings, 94.

sewage to be purified before discharge into, 140.

PONIES,

bye-laws as to, 236.

licensing of proprietors, drivers, &c. of, 236.

stands for, 236.

POOL,

nuisance from, 108.

POOR LAW AMENDMENT ACTS,

text of certain sections of Act of 1844...797—799; of Act of 1849...925; of Act of 1866...939.

POOR LAW AUDIT ACT, 1848,

text of, 923, 924.

POOR LAW UNION,

definition of, 527.

POOR RATE,

appeals in respect of, by parish council, 701.

books, inspection of, for purposes of general district rate, 291.

collectors of, to collect separate rates, 312.

contributions for general expenses to be paid out of, 311; and for special expenses in certain cases, 311.

payment of, by undertakers until completion of works, 839.

POOR RATE ASSESSMENT AND COLLECTION ACT, 1869,

powers of vestry under, may be conferred on urban district councils, 732.

PORT SANITARY AUTHORITY,

assignment of powers to, 384.

borrowing powers of, 324, 325.

common fund of, contributions to, 386.

constitution of, permanently or temporarily, 383; permanently by ordinary order, 480.

definition of district of, 545.

delegation of powers to riparian authority by, 386.

existing at passing of Public Health Act, 1875, saving for, 414.

expenses of, mode of defraying of, 384; to be defrayed out of common fund, 386.

joint board as, 384.

jurisdiction of, 385.

of London, 387.

precepts of, 386.

rates may be levied by, on default of riparian authority to comply with precept, 387.

POST,

service of notices, orders, &c. by, 359.

POSTMASTER-GENERAL,

saving for works, &c. of, from bye-laws as to wires, &c., 569.

INDEX.

POST MORTEM

examinations, provision of place for, 155.

POST OFFICE ACT, 1891,

local authority may contribute land or money towards new post office, 1300.
rural authority may undertake to pay loss occasioned by extra postal facilities, 1301.

POULTRY,

unfit for human food, provisions as to, 136—140.

POUND,

provision of, 910; impounding in, 909.

POVERTY,

cleansing and disinfection of premises in case of, 141.
reduction or remission of urban rates on ground of, 302.

POWERS,

of burial board, transfer of, to urban authority, 454.
of defaulting local authority, transfer of, to county council—under Part II. of Housing of Working Classes Act, 1890...625; under Allotments Act, 1890...1280, 1281; under Local Government Act, 1894...713, 726.
definition of term in Local Government Act, 1888...527.
delegation of, by county council to district council, 507.
of inspectors of Local Government Board, 390.
of local authority. *See* LOCAL AUTHORITY.
of overseers or parish council, conferment of, upon urban district council or other representative body, 730, 731. *See also* OVERSEERS; PARISH COUNCIL.
of parochial committees, 273.
under Public Health Act to be cumulative, 423.
of rural authorities, 30, 723—725.
transfer of—on alterations of areas, 376, 377; settlement of difference arising out of, 398; settlement of dispute as to, 762.
transfer of, to council of borough on constitution, 408.
transfer of property and liabilities consequent on transfer of, 759, 760.
transferred to county councils, general provisions as to, 506; summary proceedings for determining questions as to, 507.
urban, investment of rural authority with, 378, 562, 681, 725.
of urban authority, 28.

PRECAUTIONS,

during construction or repair of sewers, streets, and houses, 222, 892, 893.

PRECAUTIONS AGAINST,

cholera, memorandum of Local Government Board as to, 1404.
epidemic diseases, memorandum of Local Government Board as to, 1431.
small-pox, memorandum of Local Government Board as to, 1435.

PRECEPT,

current at the appointed day, saving for, 772, 773.
of joint board for contributions to common fund, 381, 382.
of port sanitary authority, 386.
of rural authority for contributions—to be issued to overseers, 310; general and special expenses to be separated in, 310, 311; how to be met, 311 *et seq.*; recovery from overseers of sums due under, 313.

PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888,

text of, 1255—1258.

PREMISES,

affixing on, of notices, orders, &c., 359.
charge on, of expenses for which owner liable, 341, 342; of expenses of private street works, 687, 688.

INDEX.

PREMISES—*continued*.

definition of, 6.

entry on—to abate nuisance, 122, 124 ; authorised to be acquired compulsorily under Housing of Working Classes Act, 1890...651 ; to examine drains, privies, &c. on complaint of nuisance, 68 ; to examine as to nuisances, 124, 444 ; to examine meat, &c., 136, 140 ; to examine whether chemical refuse turned into sewers, 571, 572 ; for execution of regulations as to epidemic diseases, 152 ; to inspect water supply in rural district, 462 ; for purposes of Infectious Disease (Prevention) Act, 1890...557.

licensed, meeting of district council not to be held on, 757.

PRESCRIBED DISTANCE,

definition of, for purposes of hackney carriages, &c., 235.

PRESSURE

at which water may be supplied, 82.

PRINTING

of notices, orders, &c., 358.

PRIVATE IMPROVEMENT EXPENSES,

appeal to Local Government Board against decision of local authority as to, 360.

to be charge on premises, 341, 342.

increased value of other buildings caused by demolition of obstructive buildings to be deemed to be, 626.

expenses which may be declared to be—cost of drainage works on default of owner or occupier, 54 ; cost of constructing new sewer, 54 ; cost of providing privy, water-closet or ashpit accommodation on default of owner, &c., 64 ; cost of works required for removing nuisance created by drains, privies, &c., 68 ; cost of works for supply of water to house, 88 ; in rural district, 458 ; cost of private street works, 176, 687.

loans for purposes of, 317.

payment of, by instalments, 341, 342.

rate may be made to defray, 291 ; rates for, power of rural authority as to, 314.

recovery of, from owners, 341, 342.

rent-charges in respect of advances for, 322, 323, 446.

PRIVATE IMPROVEMENT RATES,

alteration of, 300, 363.

appeals against, 363 *et seq.*

collection of, 301.

deduction from rent of proportion of, 292.

estimate to be prepared before making, and to be open for inspection, 296.

evidence of, 301.

owner to pay, when premises empty, 291.

power to make, 291 ; for purposes of increased value to other buildings caused by demolition of obstructive buildings, 626.

publication of, not required, 301.

recovery of, summary proceedings for, 339.

redemption of, 293.

in rural districts, 314.

PRIVATE STREET WORKS. *See also* PRIVATE IMPROVEMENT EXPENSES and RATES.

adoption of streets on execution of, 198, 589, 689, 690.

accounts of expenses of, to be kept separately, 690.

application of moneys received in respect of, 690.

apportionment of cost of, 176, 682, 686 ; provisional apportionment, 682, 686 ; final apportionment, 687.

charge on premises of expenses of, 341, 687 ; register of charges, 688.

contribution by urban authority towards cost of, 688.

estimate of cost of, 176, 682, 685, 692 ; amendment of estimate, 686.

INDEX.

PRIVATE STREET WORKS—*continued*.

- exemption of churches, &c., from expenses of, 197, 688.
- expenses of local authority in relation to, 691.
- incidental works which may be included in, 685.
- inspection of specification, plan, estimate, and provisional apportionment of, 683.
- loans by limited owners for purposes of, 689; loans by urban authority for purposes of, 689.
- notice as to, 176; form of, 444.
- objections to, 683, 685; to final apportionment of expense of, 687.
- publication of resolution approving proposed works, 683.
- railways and canals abutting on street not to be chargeable with expenses of, when, 690.
- recovery of expenses of, 176, 687, 688.
- specification, plan and section of, 683, 692; amendment of specification, &c., of, 686.
- urban authority may compel the execution of, 176; may resolve to do, 682.
- what streets are within section 150 as to, 176—181 *n*.

PRIVATE STREET WORKS ACT, 1892,

- adoption of, by urban authority, 680.
- definitions in, 681.
- expenses of authorities in execution of, 691.
- extension of, to rural district, 681.
- powers of, to be cumulative, 691.
- certain provisions of Public Health Act, 1875, superseded by, 691.
- text of, 680—692.

PRIVATE STREETS,

- adoption of, 198, 589, 689, 690.
- lighting of, 176, 682.

PRIVIES. *See also* SANITARY CONVENIENCES.

- alteration of, 68.
- bye-laws as to, 204, 205, 578.
- cleansing of, 69—72.
- common to two houses, 64.
- examination of, on complaint of nuisance, 68.
- nuisance from, summary dealing with, 108.
- nuisance not to be created by, 68.
- overflow or soakage from, penalty for, 74.
- penalty for building house without, 63.
- provision of—may be enforced, 63, 64; for factories, enforcement of, 65, 66; in connection with mines, 1227.
- public, provision of, by urban authority, 66, 67.
- rooms over, not to be used for dwelling or sleeping, 580.

PRIVY COUNCIL,

- powers of, as to quarantine, 783—793.
- transfer to Local Government Board of certain powers of, 486, 987, 989.

PROCEEDINGS,

- for abatement of nuisance, 119, 120 *et seq.*; when caused by two or more persons, 338; description of owner or occupier in, 338.
- by auditor for recovery of certified sum, 328.
- for closing dwelling-house unfit for human habitation, 619, 620.
- civil and criminal, distinction between, 333 *n*, 334 *n*.
- of committees of district and parish council, 753, 774, 775.
- current at the appointed day, saving for, 772, 773.
- against defaulting officers, 269, 270.
- of district council other than borough council, application to, of Public Health Act, 1875...755; rules as to, 426 *et seq.*; evidence of minutes of, 428; not to be invalidated by vacancies, &c., 428.
- instituted by Local Government Board, costs of, 389.
- of joint boards, 381, 429.

INDEX.

PROCEEDINGS—*continued*.

- legal, 333—370 ; appearance in, of local authority, 349 ; name of local authority need not be proved in, 350 ; not to be quashed for want of form, nor to be removable into superior court, 350.
- under local Acts, saving for, 422.
- of local boards, rules as to, 426 *et seq.*
- at meetings of local authorities, 271, 272.
- at meetings of committees, 274.
- for offences against regulations as to epidemic diseases, 152.
- against persons acting in execution of statutory or other public duty, 692 *et seq.*
- for preventing pollution of streams, &c., 96.
- for recovery of penalties, by whom to be taken, 336.
- for recovery of demands below 50*l.* in county court, 350.
- summary—for determining questions as to powers, &c., transferred to county councils, 507 ; for offences, penalties, &c., 333 ; general provisions as to, 335 ; for recovery of rates, 339 ; for recovery from owner of expenses, stay of, on appeal to Local Government Board, 359.
- of urban authority being borough council, 271.

PROCEEDS

- of sale of superfluous lands, application of, 244.

PRODUCTION

- to auditor of accounts and vouchers, 327.

PROFANE

- books, &c., sale of, in streets, 913.

PROFIT,

- from sale of house refuse, &c., 69.
- sewers made for, vesting of, 32.

PROHIBITION of

- recurring nuisance, 120, 122.
- use of house unfit for habitation, 122.

PROJECTIONS

- in streets, removal of, 889.

PROMOTERS,

- meaning of, in incorporated Acts, 410.

PROMOTION

- of bill in parliament by local authority, sanctions and approvals required to, 1001, 1002.
- of provisional order, costs of, 393.

PROPERTY,

- adjustment of, scheme or order under Local Government Act, 1888, may provide for, 520 ; general provisions as to, in Local Government Act, 1888... 521 ; general provisions as to, in Local Government Act, 1894...760, 761.
- of burial board, transfer of, to urban authority, 454, 750.
- definition of term in Local Government Act, 1888...528.
- of existing authorities under adoptive Acts on transfer, 750.
- of local authority, penalty for damaging, 402.
- public, held by trustees, transfer of, to parish council, 711.
- of sanitary authorities under Sanitary Acts, vesting of, in local authorities, 30.
- transfer of, on alterations of areas, 367, 377 ; on transfer of powers and duties, 759, 760.
- transfer of, settlement of differences arising out of, 398.
- transfer of, to council of borough on its constitution, 408.

PROPRIETORS

- of horses, donkeys, &c., standing for hire, licensing of, and bye-laws as to, 236.
- of pleasure boats, licensing of, 236.

[99]

G 2

INDEX.

PROSECUTION

of offences summarily, 333.

PROTECTION of

local authority, their officers and contractors, from personal liability, 352.
market, 232, 233.

persons acting in execution of statutory or other public duty, 692 *et seq.*

water from fouling, 84, 94—97, 881, 882.

water-course from sewage pollution, 96.

PROVISIONAL ORDERS of

Board of Agriculture, under Commons Act, 1876...1050—1052.

Board of Trade, under Gas and Water Works Facilities Acts, 943—948, 1006 ;
under Railway and Canal Traffic Acts, 1239, 1240, 1284; under Tramways
Acts, 949—953, 969—971.

county council, for compulsory acquisition of lands under Allotments Act,
1887...1217, 1218.

Local Government Board generally—Act confirming to be public general
statute, 391; alteration or repeal of Act confirming, 391; bill to confirm
introduction, &c. of, 391; circulars and instructions as to applications for,
1512—1528; costs of, 393; evidence of, 391; revocation of, 391; matters
which may be included in, under Local Government Act, 1888.. 519, 520;
application to orders under Local Government Act, 1888, of provisions of
Public Health Act, 1875...325.

Local Government Board, altering areas, general provisions as to, 376, 377.

Local Government Board for—altering boundary of county or borough, 516;
altering or repealing local Acts, 397; altering mode of defraying expenses
of urban authority, 278; authorising gas undertaking, 224; confirming
scheme under Part I. of Housing of Working Classes Act, 1890...604—606;
compulsory purchase of lands, 247; constituting joint committee for pur-
poses of Rivers Pollution Prevention Act, 1876...500; constituting local
government district, 372; constituting permanent port sanitary authority,
384; constituting, uniting, &c. county boroughs, 516; dealing with
boroughs not urban districts, 515; dissolving, extending, or diminishing
local government districts, 371; dissolving Improvement Act district
within borough, 371; forming compensation district under Brine Pumping
(Compensation for Subsidence) Act, 1891...1289; forming united district,
379 *et seq.*; preventing discharge of gases from salt or cement works, 1117;
settling differences and adjusting accounts arising out of alterations of
areas, 398; uniting districts for appointment of medical officer of health,
383.

secretary of state confirming improvement scheme, 604—606.

PROXY

for owner—appointment of, 433; form of appointment, 449; claims of, to be
entered on register, 433; form of claim, 448; notice as to sending in of
claims, form of, 446; voting of, at poll, 449.

PUBLIC

bathing, incorporation of provisions of 10 & 11 Vict. c. 89, as to, 235; text of
such provisions, 922, 923.

body, definition of, in Public Bodies (Corrupt Practices) Act, 1889...538.

clocks, payment by urban authority of cost of repair, lighting, &c., of, 592.

conveyance—definition of, 145 *n*; disinfection of, 146, 556; penalty for
exposure in, of infected person, 144, 145.

office, definition of, in Public Bodies (Corrupt Practices) Act, 1889...538.

playgrounds, 928.

pleasure grounds, provisions as to, 226—229; contribution by urban authority
towards, 591.

property held by trustees, transfer of, to parish council, 711.

resort, places of, definition of, 587; incorporation of provisions of 10 & 11 Vict.
c. 89, as to, 235; substantial construction of, and means of ingress to, and
egress from, 586, 587.

INDEX.

PUBLIC—*continued.*

sanitary conveniences—not to be accessible from street without consent, 575, 576; bye-laws and regulations as to, 575; charges for use of, 575.
walks—provisions as to, 226—229, 928; contribution by urban authority towards, 591; powers of parish council as to, 703.

PUBLIC AUTHORITIES PROTECTION ACT, 1893,
text of, 692—697; repeals effected by, 697.

PUBLIC BODIES (CORRUPT PRACTICES) ACT, 1889,
text of, 535—539.

PUBLIC HEALTH ACT, 1858,
text of, 927, 928.

PUBLIC HEALTH ACT, 1875,
authorities for execution of, 24—31.
bye-laws inconsistent with, repeal of, 410.
definitions in, 2—23.
extent of, 1.
incorporation with—of provisions of Towns Improvement Clauses Act, 1847... 223, 234; of provisions of Towns Police Clauses Act, 1847... 235; of provisions of Markets and Fairs Clauses Act, 1847... 232, 233; of Water Works Clauses Acts, 83, 84; of Lands Clauses Acts, 246.
Part I. Preliminary, 1—23; II. Authorities for execution of Act, 24—31; III. Sanitary provisions, 32—156; IV. Local government provisions, 157—237; V. General provisions, 238—275; VI. Rating and borrowing powers, &c., 276—332; VII. Legal proceedings, 333—370; VIII. Alteration of areas and union of districts, 371—388; IX. Local Government Board, 389—399; X. Miscellaneous and temporary provisions, 400—413; XI. Saving clauses and repeal of Acts, 414—425.
powers of, to be cumulative, 423.
repeals effected by, 425, 451.
schedules to, construction of, 411.
short title of, 1.
substitution of provisions of, for repealed enactments, 410.
supersession of certain provisions of, by Private Street Works Act, 1892... 691.

PUBLIC HEALTH ACT, 1889,
text of, 534.

PUBLIC HEALTH ACTS,
definition of, in Public Health (Building in Streets) Act, 1888... 531.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1890,
adoption of, 560.
application of part of, to rural districts, 593.
bye-laws under, general provisions as to, 564.
definitions in, 564, 565.
expenses of executing, 562, 593.
extension of, to rural districts, 562.
legal proceedings, &c., under, 563.
Part I. of, general, 560—567; Part II. of, telegraph, &c. wires, 567—570; Part III. of, sanitary and other provisions, 570—594; Part IV. of, music and dancing, 594—599; Part V. of, stock, 599, 600.

PUBLIC HEALTH ACT (SUPPORT OF SEWERS) AMENDMENT ACT,
1883,
text of, 469—472.

PUBLIC HEALTH (BUILDING IN STREETS) ACT, 1888,
text of, 530—534.

PUBLIC HEALTH (CONFIRMATION OF BYE-LAWS) ACT, 1884,
text of, 474, 475.

INDEX.

- PUBLIC HEALTH (FRUIT PICKERS' LODGINGS) ACT, 1882,
text of, 469.
- PUBLIC HEALTH (INTERMENTS) ACT, 1879,
text of, 465—468.
- PUBLIC HEALTH (MEMBERS AND OFFICERS) ACT, 1885,
text of, 481, 482.
- PUBLIC HEALTH (OFFICERS) ACT, 1884,
text of, 476.
- PUBLIC HEALTH (RATING OF ORCHARDS) ACT, 1890,
text of, 547.
- PUBLIC HEALTH (SHIPS) ACT, 1885,
text of, 477—481.
- PUBLIC HEALTH (WATER) ACT, 1878,
text of, 457, 458.
- PUBLIC HEALTH AND LOCAL GOVERNMENT CONFERENCES ACT,
1885,
text of, 476.
- PUBLIC IMPROVEMENT ACT, 1860,
text of, 928.
- PUBLIC LIBRARIES ACTS. *See also* ADOPTIVE ACTS, &c.
accounts under, and their audit, 1326.
acquisition and disposal of land under, 1323.
adoption of, 1321, 1329, 1330; in urban district, 1335.
charity land may be granted for purposes of, 1324.
combinations of library authorities, 1323, 1336.
commissioners under, constitution, rotation, meetings, and proceedings of, 1322.
committees under, appointment and powers of, 1324.
definitions in, 1328.
expenses under, how to be defrayed, 1325; limitation of expenditure, 1320.
loans for purposes of, 1326.
management of libraries, &c., 1324.
provision under, of libraries, museums, and schools of science and art, 1323.
provisions of, as to London, 1327.
repeals effected by, 1328, 1331.
text of Act of 1892...1320—1331; of Act of 1893...1335.
vesting of property under, 1324.
- PUBLIC WORKS LOANS ACTS,
accounts by commissioners, 1040; accounts by local authority as to loans
under, 1174.
application of surplus balance of loan, 1125.
constitution and powers of commissioners, 1028—1030.
definitions in Act of 1875...1041.
examination by Local Government Board as to proper application of moneys
advanced under, 1036, 1089, 1125.
funds for loans, 1031, 1109, 1175.
guarantees by local authority in respect of pier and harbour loans, 1173, 1215.
notices to or by commissioners, 1040, 1041.
purposes of loans under, 1030, 1043, 1345.
rate of interest for loans under, 1030, 1044, 1109, 1332.
recovery of loans, 1032—1036.
regulations by commissioners, 1037—1040.
repayment of loan before due, 1035.
restriction on amount of loans to one borrower, 1109.
security for loans, 1031, 1089; change of security, 1037.
suspension of payment of principal and interest on loans, 1037.
terms and duration of loans, 1030, 1031.

INDEX.

PUBLIC WORKS LOANS ACTS—*continued.*

text of Act of 1875...1028—1043; of Act of 1876...1044; of Act of 1878...1088; of Act of 1879...1109; of Act of 1881...1124; of Act of 1882...1173; of Act of 1883...1175; of Act of 1887...1215; of Act of 1892...1332; of Act of 1894...1345.

PUBLIC WORKS LOANS COMMISSIONERS. *See also* PUBLIC WORKS LOANS ACTS.

loans by—to local authorities, 323, 324, 473, 616, 634; to companies, &c., for purposes of working class lodging-houses, 646.
rates of interest on loans by, 323, 652.

PUBLICATION of

abstract of audited accounts of district and parish councils, 328, 754, 1377.
change of name of district council or county district, 752.
change of name of local board, 409.
notice of audit, 326, 754; of notice of improvement scheme, 603.
order—investing rural authority with urban powers, 378; settling dispute as to boundaries of urban district, 379.
orders of Local Government Board, 389, 456.
regulations as to epidemic, &c. diseases, 147, 152.
report of auditor on audited accounts, 754.
resolution, &c., as to private street works, 683, 692.
resolution adopting—Infectious Disease (Notification) Act, 1889...541; Infectious Disease (Prevention) Act, 1890...549; Museums and Gymnasiums Act, 1891...1285; Public Health Acts Amendment Act, 1890...561; Public Libraries Act, 1892, in urban district, 1335; Private Street Works Act, 1890...680.
urban rates, 301.

PULLING DOWN

of works in contravention of bye-laws as to new buildings, 205, 217.

PUMP,

included in term waterworks, 21.
public—closing of polluted, 96; vesting of, in local authority, 89.

PURCHASE of

cemetery by local authority, 465.
dam, water-mill, or weir, 244.
electric lighting undertaking by local authority, 1229, 1230.
gas undertaking by urban authority, 225, 226.
lands by local authority, 244; incorporation of Lands Clauses Acts for, 246; compulsorily, provisions as to, 244 *et seq.* (*see also* COMPULSORY PURCHASE); from officers of authority, 481; from Duchy of Lancaster, 249, 250.
lands for—markets, 229; purposes of working class lodging-houses, 643; providing accommodation for working class displaced by improvement scheme, 614; sewage disposal works, 58; for street improvements, 201.
lands included in schemes under Housing of Working Classes Act, 1890...611—614, 628; 629, 663—672.
lodging-houses by local authority, 643.
market undertaking by urban authority, 233, 234.
periodical publications, memorandum of Local Government Board as to, 1373.
public walks and pleasure grounds, 226.
tramways by local authority, 961.
sewers by local authority, 35.
site of obstructive buildings by local authority, 626.
water or water rights by local authority, 77.
waterworks by local authority, 76.

PURIFICATION of

houses, 73.
sewage before discharge into streams, 40.

INDEX.

PURITY

of water supplied by local authority, 82.

QUALIFICATION of

chairman—of board of guardians, 717 ; rural district council, 721.
guardians, 715.
inspector of nuisances, 263.
medical officer of health, 263, 501, 502.
member of joint board, 380.
rural district councillor, 721.
urban district councillor, 719.

QUARANTINE ACT, 1825,

text of, 783—793.
what vessels are within, 454.

QUARRY FENCING ACT, 1887,

text of, 1202, 1203.

QUARTER SESSIONS,

definition of, 526.

QUARTER SESSIONS BOROUGH,

definition of, 526.

with population of 10,000—application to, of Local Government Act, 1888, 509, 510 ; to form part of administrative county except for specified purposes, 509 ; to form part of county for purposes of main roads, 510 ; to be deemed urban district within 41 & 42 Vict. c. 77...510 ; bye-laws as to locomotives may be made by council of, 510 ; council of, may claim to retain maintenance of main roads, 511 ; declaration of main roads in, 511.
with population of less than 10,000—application to, of Local Government Act, 1888...511—513 ; to form part of administrative county for all purposes, 512 ; to be urban district within 41 & 42 Vict. c. 77...512 ; declaration of main roads in, 512 ; revocation of grant of quarter sessions to, 511 ; transfer to county council of certain powers of council of, 511.

QUARTER SESSIONS COURT,

appeal to—against rates or orders, &c. of summary jurisdiction court, 363 *et seq.* ;
under Public Health Amendment Act, 1890...563.
definition of, 22.
jurisdiction of, under Public Bodies (Corrupt Practices) Act, 538.
revocation of grant of, 513.
transfer to district councils of certain powers of, 728.

QUASHING

of rate or order, &c. by quarter sessions, 363 *et seq.*

QUAYS,

works not to be executed under or through without consent, 415.

QUEEN'S BENCH,

appeals to, against auditor's decisions, 327, 798.

QUESTIONS

at meetings of non-borough district council, how to be decided, 428.
as to powers, &c., transferred to county council, summary proceedings for determining, 507.
as to transfer of powers, &c. under Local Government Act, 1894, summary proceedings for determining, 762.

QUORUM

at meeting of non-borough district council, 427 ; of joint board, 429.

INDEX.

RACK RENT,
definition of, 11.

RAILWAY,
abutting on streets, not to be chargeable with private street expenses, when, 690.
assessment of—to general district rate, 283; to special expenses rate, 311;
meaning of term for purposes of assessment, 288 *n*.
buildings, exemption of, from provisions as to building line, and bye-laws as to new streets and buildings, 205.
company, powers of, and loans to, for purposes of working class lodging-houses, 646, 647.
public bridge over or subway under, construction or adoption of, 166.

RAILWAY AND CANAL TRAFFIC ACT, 1888,
appeals from decision of commissioners under, 1237.
definitions in, 1248.
expenses of local authorities under, 1247.
jurisdiction of commissioners under, 1235, 1237, 1238.
powers of sanitary authorities under—to make complaints, 1235; to make applications as to derelict canals, 1246; to enter into agreements with respect to expense of constructing bridges, subways, &c., 1237.
provisions of, as to canals, 1243 *et seq*.
revised classification of traffic and schedule of rates under, 1238—1240.
through traffic and through rates, 1240, 1241.
undue preferences, provisions against, 1242.

RAILWAY AND CANAL TRAFFIC ACT, 1892,
text of, 1320.

RAILWAY AND CANAL TRAFFIC (PROVISIONAL ORDERS) AMENDMENT ACT, 1891,
text of, 1283, 1284.

RAILWAYS CLAUSES CONSOLIDATION ACT, 1845,
incorporation of certain provisions of, with order for compulsory acquisition of lands for allotments, 708.
text of, as to recovery of damages and penalties, 843—846.

RATE BOOKS,
deposit of, for inspection, prior to audit, 326, 327.
estimate of urban rates to be entered in, 296.
inspection of, for purposes of meetings of owners or ratepayers, 434.
production of, to auditor, 326, 327.

RATEABLE VALUE,
definition of term, 765.

RATEPAYERS. *See also OWNERS AND RATEPAYERS.*
appeal of, to confirming authority on default of medical officer of health to make official representation as to unhealthy area, 610.
application of, for order investing rural authority with urban powers, 378.
petition of, for settlement of boundary of place not having known and defined boundary, 373.
may require water rates or rents to be levied, 462, 463; may require official representation to be made as to unhealthy area, 602.
who entitled to vote at meetings and polls of, 430.

RATES,
county, liability of quarter sessions borough to contribute to, 509, 512.
current on the appointed day, saving for, 772, 773.
general district. *See GENERAL DISTRICT RATES.*
highway—accounts as to, 296; when to be made in urban district, 293; not to be made on inhabitants of urban district for roads without district, 157;
recovery and application of arrears of, on constitution of urban district, 165.

INDEX.

RATES—*continued*.

- levy of, by joint board or port sanitary authority on default of authority to comply with precept, 387.
- levy of, by person appointed to perform duty of defaulting local authority, 395.
- library, limitation of, 1320; incidence of, 1325.
- priority of, in distribution of property of bankrupts, 1255.
- return as to, to be made annually, 929, 1077.
- for special expenses—appeals against, 311; assessment of certain properties to, at one-fourth, 311, 548, 679; collection of, 312; making, assessing and levying of, 311; mortgage of, as security for loans, 315; surplus of, to be paid to rural authority, 312.
- for technical instruction, limitation of, 1270.
- urban (*see also* GENERAL DISTRICT RATES and PRIVATE IMPROVEMENT RATES)—altering of, 300, 363; appeals against, 363 *et seq.*; collection of, 301; description in, of owners and occupiers, 300; evidence of, 301; inspection and taking copies of, 299; limit in local Act not to apply to, 307; payment of, by instalments, 301; publication of, 301; not to be quashed for want of form, 350; recovery of, summary proceedings for, 339; reduction or remission of, for poverty, 302; saving for existing agreements and leases, 302.
- for water, power to charge, 83; for water supplied from standpipe in rural district, 462; payment and recovery of, 84, 882—886, 938; power of ratepayers to require levy of, 462, 463.

RATING,

- exemptions from, 284 *n.*
- owners instead of occupiers to general district rates, 279.
- successive occupiers, 283.
- unoccupied premises, 283.
- Universities, 308.
- water-works provided by local authority, 78 *n.*

RATIONE TENURÆ,

- highways repairable, powers of district council as to, 723.

RE-BORROWING,

- by local authority, 314; period for repayment of moneys re-borrowed, 317.

RE-BUILDING,

- of building, when to be deemed new building, 222.
- of house without privy and ashpit accommodation, penalty for, 63; without drains, penalty for, 57; building line may be prescribed on, 201.

RECEIVER,

- appointment of, 321.

RECOGNIZANCE,

- appellants to enter into, 365 *n.*

RECOMMENDATION

- by Local Government Board as to loan by Public Works Loan Commissioners, 323.

RECONSTRUCTION

- scheme dealing with unhealthy houses under Part II. of Housing of Working Classes Act, 1890...627 *et seq.*

RECOVERY of

- arrears of highway rates on constitution of urban district, 165.
- costs of local inquiries by Local Government Board, 389.
- demands below 50*l.* in county court, 350.
- expenses, summary proceedings for, 333; of expenses for which owners liable, 341, 342.

INDEX.

RECOVERY of—*continued.*

expenses incurred by local authority in connection with—abatement of nuisance, 122; burial of body removed from mortuary, 154; drainage works on default of owner, 54; maintenance of patient in hospital, 150; new sewers, 56; nuisances, 68, 125; polluted well, 97; private street works, 176, 687, 688; provision of privy or ashpit accommodation, 64; purifying house, 73; removal of works contrary to bye-laws, 217; water supply to house, 88.
gas rents, 865, 979.
instalments of expenses for which owners are liable from occupier, 341, 342.
moneys due under auditors' certificates, 328, 797, 924, 925.
penalties, &c., summary proceedings for, 333; restrictions on, 336; of penalties under Acts incorporated with Public Health Act, 410.
penalties, damages, &c.—under Lands Clauses Acts, 840—842; under Railways Clauses Consolidation Act, 1845...843—846; under Gas Works Clauses Act, 1847...870; under Companies Clauses Consolidation Act, 1845...805—807.
rates, summary proceedings for, 339.
rent or possession of allotments, 1221.
sums due under precept of joint board, 381, 387; under precept of port sanitary authority, 386, 387; under precepts of rural authority, 313.
water rates, 84, 882—886, 938.
water rents, 83.

RECREATION GROUNDS,

held by trustees, transfer of, to parish council, 711.
improvement and regulation of, by parish council, 703.
provision of, by parish council, 701; by local authority, 226.
provisions as to, in Commons Act, 1876...1054—1056.
purchased with compensation money paid for common lands taken, vesting of, 1129.
taken under Lands Clauses Acts, application of compensation for, 1129.

RECURRING NUISANCES,

complaint to justice as to, 119.
order of court as to, 120, 442.
penalty for non-compliance with Order, 122.
proceedings as to, when caused by several persons, 338.

REDEMPTION

of private improvement rate, 293.

REDUCTION

of urban rates on score of poverty, 302.

RE-ELIGIBILITY

of guardian or urban or rural district councillor, 746.

RE-ERECTION

of building, when to be deemed new building, 222.

REFORMATORY AND INDUSTRIAL SCHOOLS,

transfer to county council of powers, &c. of smaller quarter sessions boroughs as to, 511, 512.

REFUGES

in streets, erection of, 588.

REFUSAL to

admit to premises, in connection with nuisances, 124.
allow inspection of register of mortgages, 320; of poor rate books for purposes of general district rates, 291; of urban rates, 299.
register—common lodging-house or keeper, 101; transfer of mortgage, 320.

INDEX.

REFUSE,

receptacles for deposit of, provision of, by urban authority, 73.
removal of, from houses, 69—72, 581; bye-laws may require secondary access to premises for purposes of removal, 205 *n*, 578.

REGISTER of

charges on premises of expenses of private street works, 688.
common lodging-houses, 99.
dairymen, cowkeepers, &c., transfer of, from county to local authority, 487.
grants of exclusive rights of burial, &c., 902, 903.
infants received in registered house, 995.
mortgages, 320; of transfer of mortgages, 320.
owners and proxies, claims to be entered on, 433; form of claim, 447, 448.
rent-charges and transfers, 323.
tenancies of allotments, 1226.

REGISTER OF PAROCHIAL ELECTORS,

county ownership voters in parliamentary borough, how to be shown in, 738.
duties of clerk of county council and town clerk, as to, 739.
to be framed in parts for wards, &c., 738.
marking, &c., of, 738.
persons on, may attend meetings and vote as parochial electors, 737.
persons may be registered on, in more parishes than one, 738.
separate list of parochial electors to be part of, 739.
what to form, 737.
women qualified to be on, 737.

REGISTRATION of,

alkali, &c., works, 1117.
burials in consecrated part of cemetery, 903.
canal boats, 1073, 1075.
common lodging houses and keepers, 101; notice of registration to be affixed on house, 102.
dairymen, cowkeepers, and milk purveyors, 487.
houses under Infant Life Protection Act, 995.
lodging-houses, bye-laws as to, 106.
margarine manufactory, 1211.
mortgages and transfers of mortgages, 320.
music and dancing licences, 596.
rent-charges and transfers, 323.
slaughter-houses, 894, 895; notice of, to be affixed to premises, 234.

REGULATION of

common. *See* COMMONS ACT, 1876.
market, provisions as to, 232, 233.
slaughter-houses, bye-laws as to, 234.

REGULATION OF RAILWAYS ACT, 1868,

provisions of, as to arbitrations by Board of Trade, 941.

REGULATIONS. *See also* RULES.

allotments, 1219; model regulations of Local Government Board, 1383.
arbitrations, 251.
attendances at conferences, 476, 477, 1420.
audit, Local Government Board may make, 1102.
bicycles and tricycles, 523.
of Board of Trade under Electric Lighting Acts for protection of safety, &c., 1231—1234.
cabmen's shelters, 589.
canal boats, 1073, 1075, 1200.
communications between drains and sewers, 51.
dairies, cowsheds, and milkshops made by county authorities to be deemed made by local authorities in county, 487.
endemic, epidemic, or infectious disease—borrowing powers of local authority for purposes of, 473; enforcement of, by Customs officers, 534; execution of,

REGULATIONS—*continued*.

- by local authority, 152; making of, by Local Government Board, 147, 151; penalty for violating or obstructing execution of, 153; publication of, 152.
- of local authorities not subject to provisions as to bye-laws, 259.
- of Local Government Board—as to cholera, 1400, 1406, 1408, 1409; as to allotments (model), 1383; under Canal Boats Act, 1887...1391; under Gas and Waterworks Facilities Acts, 1512; as to inquiries and notices under section 57 of the Local Government Act, 1888...1388; as to medical officers and inspectors of nuisances (urban authorities), 1497; (rural authorities), 1505; as to proceedings under section 9 of Local Government Act, 1894, for compulsory acquisition of land for allotments, 1414.
- meetings, power to make, 426.
- places for post-mortem examinations, 155.
- public sanitary conveniences, 575.
- removal of infected person from ship to hospital, 144.
- stock, making of, by Local Government Board, 599, 600.
- under Tramways Act, 1870, made by urban authority, confirmation of, 475.
- of urban authority as to duties and conduct of officers, &c., 260.

RELIEF,

- disqualification of tenant of working class lodging-house on receiving, 644.
- disqualification for office of person in receipt of, 739.

RELIEVING OFFICER,

- burial by, of body of person dying of infectious disease, 154; of body of person ordered by justice to be buried, 555.

REMISSION

- of disallowances and surcharges, 923.
- of urban rates on score of poverty, 302.

REMOVABILITY

- of officers of urban authority, 260.

REMOVAL of

- buildings erected contrary to byelaws, 205, 217.
- filth on notice by inspector of nuisances, 75.
- fæcal or offensive matter, bye-laws as to, 580.
- house refuse, 69—72; bye-laws may require secondary access to premises for purposes of, 205 *n*, 578; bye-laws to facilitate, 581.
- infected person to hospital, 143; infected body to mortuary, 154.
- manure periodically, 76.
- market, 230 *n*.
- obstructions in streets, 223, 888—891.
- offenders, from public walk or pleasure ground, 226.
- tenants, compensation may be paid for expenses of, 651.

REMUNERATION of

- borough auditors, for auditing accounts of urban authority, 325.
- collector of poor rates for collecting separate and special rates, 311.
- inspector of nuisances, and medical officer of health to be approved by Local Government Board, when, 263, 264.
- medical officer of health, 263, 264; when appointed for united district, 383.
- officers of rural authority, 263.
- officers of urban authority, 260.

RENEWAL

- of order temporarily constituting port sanitary authority, 384.

RENTCHARGES,

- as consideration for lands purchased, 811, 931; borrowing power of promoters reduced by capitalised value of rentcharge, 932.
- grant of, in respect of advances for private improvement expenses, 322; registration of, and of transfers, 323; form of rentcharge, 446.
- lands charged with, provisions of Lands Clauses Act, 1845, as to, 835.

INDEX.

RENTS,

for allotments, recovery of, 1221.

deduction from—of expenses recovered from occupier in lieu of owner, 125 ; of proportion of private improvement rate, 292 ; of proportion of rentcharge in respect of private improvement expenses, 322.

gas, recovery of, 865, 979.

for use of market, 229, 232, 233, 860, 861.

for water, power to charge, 83 ; for water meters, 85 ; power of ratepayers to require charging of rents for water, 462, 463.

REPAIR of

county bridges, and roads over, urban authority may undertake, 166.

cellars and vaults under, and gratings, &c. in surface of streets, 586.

footpaths by parish council, 711.

highways—in rural districts, costs of, 729, 730 ; in rural parish where transfer to rural council postponed, 771 ; in urban districts, costs of, 291 ; in part of parish outside urban district, 294, 724 ; repairable *ratione tenure*, 723 ; contribution of county council towards cost of, 495, 723.

main roads—by county council, 490, 495 ; by district council, 493 ; by urban authority, 492, 511.

parish property by parish council, 703.

public clocks, 228, 592.

sewers by local authority, 36 ; precautions during, 223.

streets, precautions during, 223.

turnpike roads, urban authority may undertake, 166.

REPAYMENT

of loans, mode and period of, 316, 317.

REPEAL of

Act confirming provisional order, 391.

Acts effected by—Public Health Act, 1875...425, 451 ; substitution of provisions of Public Health Act for repealed Acts, 410 ; Housing of Working Classes Act, 1890...660, 678 ; Local Government Act, 1888...530 ; Local Government Act, 1894...773, 777 ; Public Authorities Protection Act, 1893...697.

bye-laws—by subsequent bye-law, 256 ; inconsistent with Public Health Act, 410.

enactments—respecting local grants out of Exchequer, 503 ; as to qualification of guardians, 715 ; as to qualification of members of urban authorities, 719 ; respecting appointment of assistant overseers by guardians, 768.

local Acts by provisional order, 397.

Public Health Act, 1875, section 156...531 ; section 264...697.

REPORT,

annual, of local authority to Local Government Board, 275 ; urban authority to publish, 275.

of auditor on accounts of district or parish council, 328, 754.

of conference, purchase of, 476, 477.

of medical officer of health, to be sent to county council, 501.

as to obstructive buildings, 624.

as to persons resorting to common lodging-houses, 103.

of proceedings under Part II. of Housing of Working Classes Act, 1890, to be made to Local Government Board, 634 ; to be made to county council in certain cases, 634.

of surveyor—as to house without proper water supply, 87 ; as to most advantageous mode of contracting for work, 238 ; as to necessity for carrying sewers through private lands, 38 ; as to necessity of providing privy accommodation, 63, 65.

REPRESENTATION,

as to allotments by parish council, 702 ; by registered electors or ratepayers, 1216.

as to dwelling-house unfit for human habitation, 618, 701 ; copy to be sent to county council, when, 634 ; may be made by county medical officer of health, 640 ; to be in writing, 652.

REPRESENTATION—*continued*.

- as to obstruction of right of way, or encroachment on roadside waste, by parish council, 726.
- as to obstructive buildings, to be made by whom, 624, 701; copy to be sent to county council, when, 634; may be made by county medical officer of health, 640; to be in writing, 652.
- official, under Part I. of Housing of Working Classes Act. *See* OFFICIAL REPRESENTATION.
- to Local Government Board—by County Council as to failure of district council to put Public Health Acts in force, 503; as to alteration of boundary of borough, county, or electoral division, 516; circular and instructions of Local Government Board as to representations for alteration of borough boundary, 1516, 1524, 1525.

RESERVOIR,

- construction of, 80, 81.
- construction of, by limited owners, 1071.
- not to be injuriously affected without consent, 420.
- public, for gratuitous supply of water, vesting of, in local authority, 89.
- security of, 935.
- term waterworks includes, 21.

RESIGNATION

- of guardian or urban or rural district councillor, 746.

RESOLUTION of

- company as to sale of—water-works, how to be passed, 89; of gasworks, how to be passed, 225, 226; of market undertaking, 234.
- owners and ratepayers for constitution of local government district, 373; objections to, 375, 376; of owners and ratepayers, rules as to, 438—441.
- rural authority for constitution of special drainage district, 378, 379.

RESORT,

- places of public, incorporation of provisions of 10 & 11 Vict. c. 89, as to, 235; text of such provisions, 915, 916; construction of, and means of ingress to and egress from, 586.

RESPONDENTS

- to election petitions, substitution of, 1140. *See also* ELECTION PETITIONS.

RETENTION

- of body of infected person, prohibition of, 554.

RETIREMENT FROM OFFICE of

- guardians, 717, 756, 757; elected at first elections under Act of, 1894...766, 767.
- rural district councillors, 721, 756, 757; elected at first elections, 766, 767.
- urban district councillors, 720; elected at first elections, 766, 767.

RETROSPECTIVE

- payments which may be included in general district rate, 278, 279.

RETURNING OFFICER at

- elections under Local Government Act, 1894—appointment of, 744; use by, of school rooms, &c., 745.
- elections of rural district councillors, 1467; of urban district councillors, 1441.
- poll of owners and ratepayers—to certify result of poll, 436; notice of poll to be published by, 433, 434; penalties on, 437; who to be, 441; votes to be counted by, 436.

RETURNS

- as to local taxation, 929, 1077.

REVOCATION of

- grant of quarter sessions or commission of peace, 513.
- licence for slaughter-house, 583.
- provisional order, 391.

[111]

INDEX.

RIGHTS,

- of common, powers of district councils as to maintaining, 725.
- of drainage into sewers, 51.
- market, purchase of, 229; sale of, by company to urban authority, 233, 234.
- of navigation, saving for, 415, 419.
- under repealed Acts, saving for, 425.
- water—purchase of, 77; sale of, by company to local authority, 89; cannot be acquired compulsorily, 416 *n*; saving for, 420.
- of way—acquisition of, by parish council, 704; extinction of, over lands acquired under improvement or reconstruction schemes, 614, 629; stopping up or diversion of, 709, 710; duty of district council as to protection of, 725; representation by parish council as to obstruction of, 726; transfer to county council of powers of district council in default as to protection of, 726.

RINGING

- of door-bells to annoyance of inhabitant, penalty for, 913.

RIOUS

- or indecent behaviour in streets, penalty for, 914.

RIPARIAN AUTHORITY,

- contributions of, to common fund, 386, 387.
- definition of, 384.
- delegation to, of powers by port sanitary authority, 386.
- may be constituted port sanitary authority, 384.

RIVER,

- arbitration as to certain works affecting, 417, 418.
- not to be injuriously affected without consent, 420.
- pollution of. *See* RIVERS POLLUTION PREVENTION ACT.
- saving for bridges over, 415; for navigation of, and supply of water to, 415.
- substitution of new for existing sewers under, 419.

RIVERS POLLUTION PREVENTION ACT, 1876,

- certificate of inspector of Local Government Board as to best practicable means, 1067.
- definitions in, 1070.
- enforcement of Act, 1065.
- facilities to be afforded for factories draining into sewers, 1064.
- inquiries by, and powers of inspectors of, Local Government Board, 1068.
- joint committee of county and county borough councils for purposes of, 500.
- legal proceedings under, 1065—1068.
- manufacturing and mining pollutions, 1062—1064.
- powers of county council to enforce, 499.
- powers of, to be cumulative, 1069.
- prosecutions under, contribution by county council towards costs of, 500.
- saving in, 1069.
- sewage pollutions, 1059—1061, 1336.
- solid matters, 1058.
- text of, 1058—1070.

RIVERS POLLUTION PREVENTION ACT, 1893,

- text of, 1336.

ROAD. *See also* HIGHWAY AND STREET.

- in Isle of Wight, 497.
- main. *See* MAIN ROAD.
- public, agreement by urban authority as to making of new, 165.
- repair of, where tramway laid, 955.
- street includes, 12.
- turnpike, urban authority may undertake repair, &c., of, 166.
- trees in, planting, &c., of, 590.

INDEX.

ROOFS

of new buildings, bye-laws as to, 204, 205.
used on public occasions, safety of, 588.

ROOMS,

bye-laws as to height of, 205 *n*, 578.
over privy, &c., not to be used as dwelling or sleeping rooms, 580.
in school house or room maintained out of local rate—use of, for committees or officer appointed by district council to administer public funds, or for meetings of candidates, 699; use of, for elections under Local Government Act, 1894...745; use of, for purposes in connection with allotments, 1281.

RUBBISH,

bye-laws for prevention of nuisance arising from, 72.
receptacles for, provision of, by urban authority, 73.
throwing of, into stream, restriction on, 592.

RUINOUS BUILDINGS, 223, 891, 892.

RULES,

of Board of Trade—under Electric Lighting Acts, 1160, 1170—1173; under Gas and Waterworks Facilities Acts, 1006, 1007; under Tramways Act, 1870...967.
as to election petitions, 1141, 1143—1150.
of Local Government Board as to elections—guardians to be elected under, 717; urban district councillors to be elected under, 720; what to be provided for in, 744; as to elections of rural district councillors, 1465—1489; as to elections of urban district councillors, 1439—1465.
as to meetings and proceedings of joint boards, 429.
as to meetings and proceedings of local boards, 426 *et seq.*; to apply to non-borough district councils, 426 *n*, 755.
as to resolutions of owners and ratepayers, 438—441.
of urban authority under sect. 48 of Tramways Act, 1870, confirmation of, 475.

RURAL AUTHORITY,

definition of, in Local Government Act, 1888...527.

RURAL DISTRICT. *See also* RURAL SANITARY DISTRICT.

alteration of boundary of, 516, 517.
change of name of, 752.
to be in one county, 733.
in more counties than one, alteration of area of, by joint committees, 735.
definition of, 545.
division of, 516, 517.
division of, by Local Government Act, 1894...721; power to deal with certain matters arising out of, 761; officers of divided district, 768.
having less than five councillors, provisions as to, 721, 733.
and parish co-incident, rural district council to be parish council, 734.
rural district council to be established for every, 718.
rural sanitary districts to be called, 718; rural sanitary district in more than one county, each part to be, 721.

RURAL DISTRICT COUNCIL. *See also* LOCAL AUTHORITY; RURAL SANITARY AUTHORITY.

accounts of—audit of, 754; date to which to be made up, 754; form of, 754; inspection of, by parochial electors, 755.
chairman of, election of, at annual meeting, 427, 755; absence of, chairman to be chosen at meeting, 427; casting vote of, 428; qualification of, 721; to be *ex-officio* justice of the peace, 718.
change of name of, 752.
committees of, appointment, term of office, and powers of, 752; rules as to proceedings of, 753, 774, 775.
consent of, to stopping or diversion of right of way, 709, 710.
to consist of chairman and councillors, 721.

INDEX.

RURAL DISTRICT COUNCIL—*continued.*

default of—complaint of parish council as to, 713; powers of county council on such complaint, 713, 714, 758.
delegation by, of powers to parish council, 713.
delegation to, of powers by county council, 507.
duty of, as to protection of rights of way and roadside waste, 725.
employment of, as agent of county council, 759.
establishment of, 718.
expenses of, how to be defrayed, 728, 729.
to be highway authority, 157 *n.*, 723.
inability of, to act, powers of county council in case of, 755, 756.
incorporation of, 722.
joint committees of another council and, appointment, term of office, powers, and costs of, 753.
meetings and proceedings of, application to, of provisions of Public Health Act, 1875...755. *See also* MEETINGS OF NON-BOROUGH DISTRICT COUNCIL.
nomination of members of, 721, 722.
notice to be given to parish council by, of plans of sewerage or water supply, 714.
number of members of, alteration of, 517, 756, 757.
petition of, to Local Government Board against refusal of county council to make compulsory purchase order as to allotments, 705.
powers of, as to—highways and sanitary matters, 723; commons, 725, 726; affairs of adjoining district not having five councillors, 722; repair of highways before becoming charge on district, 771.
transfer to—of powers of rural sanitary authority and highway authority, 723; of certain powers of justices, 727, 728.
urban powers may be conferred on, by general order, 724; on application from county or parish council, 725.
use by, of board room and offices of guardians, 755.
vice-chairman of, appointment, term of office, and powers of, 755.

RURAL DISTRICT COUNCILLORS,

acceptance of office by, 746, 1490.
disqualification for office of, 739—744; of person disqualified to be guardian, 743.
to be elected, for what areas, 721.
election of, 721 (*see also* ELECTIONS REGULATED BY RULES, ETC.); union of parishes or division into wards for purposes of, 756, 757; rules as to, 1465—1489.
to be guardians, 721.
number of, 721, 766; fixing and altering of, 756, 757.
qualification of, 721.
re-eligibility of, 746, 1490.
resignation of, 746.
retirement of, 721, 756, 757; elected at first elections under Act of 1894...766, 767.
term of office of, 721.
vacancy (casual) in office of, declaration and notification of, 743, 744; filling of, 746.
vacation of office of, by absence, 743.

RURAL SANITARY AUTHORITY. *'See also* LOCAL AUTHORITY, *and* RURAL DISTRICT COUNCIL.

accounts of, audit of, 331.
adoption by, of Part III. of Housing of Working Classes Act, 1890...641, 642.
appointment by—of officers, 263; of parochial committees, 273. *See also* PAROCHIAL COMMITTEES.
apportionment by, of expenses of works common to two contributory places, 308.
bill cannot be promoted in Parliament by, 77 *n.*
certificate of, as to water supply, before occupation of new house, 461.
committees of, delegation of powers and duties to, 273.
constitution of, 27.

INDEX.

RURAL SANITARY AUTHORITY—*continued.*

- description of, 27.
- duty of, to provide or require provision of water supply, 457 ; as to acquisition of land for allotments, 1216.
- existing at passing of Public Health Act, 1875, saying for, 414.
- expenses of, divided into general and special, 308 (*see also* SPECIAL EXPENSES, and GENERAL EXPENSES); expenses of, in executing Part III. of Housing of Working Classes Act, 1890...642, 645.
- inspection by, periodically, of water supply, 461.
- local authority includes, 6; to be local authority under Bakehouse Regulation Act, 30.
- meetings of, 271, 272.
- nomination of members of, by Local Government Board, 27.
- powers, &c. of, under Public Health (Water) Act, 1878, may be conferred on urban authority, 463.
- powers and duties of, 30.
- powers of—to make bye-laws as to buildings, 205 *n*, 579 ; for recovery of sums due from overseers on precepts, 313 ; under Railway and Canal Traffic Acts, 1235, 1237, 1246.
- resolution of, for constitution of special drainage district, 378, 379.
- rural district councils supersede, 718.
- surveyor of, definition of, 6.
- transfer to, of hospital provided by guardians, 148 *n*.
- urban powers may be conferred upon, 378, 562, 681.

RURAL SANITARY DISTRICTS. *See also* RURAL DISTRICT.

- application to, of Part III. of Public Health Acts Amendment Act, 1890...593.
- to be called rural districts, 718.
- constitution of, 24.
- contributions in, mode of raising, 310, 311.
- in more than one county, each part to be rural district, 721.
- description of, 27.
- water supply to dwelling-houses in, duty of rural authority to provide or require provision of, 457.

SAFETY

- of platforms, &c., erected or used on public occasions, 588.

SALARY of. *See also* REMUNERATION.

- medical officers of health and inspectors of nuisances, payment of half of, by county councils, 504, 505.
- officers of rural authority, 263.
- officers of urban authority, 260.

SALE

- by Duchy of Lancaster, 249, 250.
- gas undertaking by company to urban authority, 225, 226.
- infected articles, penalty for, 144, 145.
- by local authority of—lands, 244 ; superfluous lands, 244 ; lands, &c. vested in them for purposes of working class lodging-houses, 644, 645, 652 ; lands acquired under improvement schemes, 608, 652.
- lands for materials for highways, consent of justice not required to, 748.
- lands for purposes of working class dwellings, 650.
- by officer of authority to authority, when permissible, 481.
- manure, &c. not removed on notice, 75.
- market undertaking of company to urban authority, 233, 234.
- matters removed in abating nuisance, 123.
- superfluous lands, 244, 838, 839, 973.
- waterworks by company to local authority, 89.

INDEX.

SALE OF FOOD AND DRUGS ACTS,

- analysis under—proceedings to obtain, 1011—1013; certificate of analysis, 1013, 1017.
- analysts under, appointment and duties of, 1010.
- application of, to sales in street, 1104.
- definitions in, 1007.
- expenses of executing, 1016.
- offences under, 1007—1010.
- proceedings under, against offenders, 1013, 1103, 1105.
- repayment by county of contribution of borough with separate police force towards expenses of executing, 1105.
- samples of food to be taken under, 1011; samples of milk in course of delivery, 1103, 1104.
- tea, examination of, on importation, 1016.
- text of Act of 1875...1007—1017; of Act of 1879...1103—1105.

SALE OF HORSEFLESH, ETC. REGULATION ACT, 1889,

- text of, 1259, 1260.

SALT WORKS. *See* ALKALI, ETC. WORKS REGULATION ACTS.

SAMPLES of

- food, taking of, 1011.
- milk, in course of delivery, 1103, 1104.

SANCTION of. *See also* CONSENT.

- Attorney-General to—proceedings for prevention of pollution of streams, 96; proceedings for recovery of penalties, 336; proceedings for recovery of penalties from officers, 476; prosecutions under Public Bodies (Corrupt Practices) Act, 1889...537.
- Local Government Board to—agreement for communication of sewers of adjoining districts, 60; agreement for supply of water to adjoining district, 87; appointment of district medical officer as medical officer of health, 263; appointment of same person as medical officer of health or inspector of nuisances for two or more districts, 263; change of name of local board, 409; construction of reservoir, 81; costs of authority in relation to provisional orders, 393; delegation by port sanitary authority of powers to riparian authority, 386; expenses of local authority, exempts from disallowance by auditor, 1228; loans of local authorities, 314, 316; loans under Baths and Washhouses Acts, 455; purchase of lands for new streets, 201; purchase of water-works, 76; purchase of gas-works, 225; sewage works without district, 63; temporary supply of medicines and medical assistance, 151.

SANITARY

- Acts, definition of, 21.
- authority and district, definition of, in Housing of Working Classes Act, 1890... 656.
- purposes, definition of, 22.

SANITARY CONVENIENCES,

- definition of, 565.
- for manufactories and workshops, 576, 1362.
- provision of, by local authority, 66, 67.
- for public accommodation—not to be accessible from street, without consent, 575, 576; bye-laws and regulations as to, 575; charges for use of, 575; letting of, 575.
- used in common—injury or fouling of, 576; in such a state as to be nuisance, penalty for, 576.

INDEX.

SANITARY WORK,

- application to, of provisions of Water Works Clauses Act, 1847, as to mines, 470, 471.
- definition of, in Public Health (Support of Sewers) Act, 1883...470.
- notice under Water Works Clauses Act may specify support required to be left, 471.
- over mine, limitation of right of support for, 472.
- saving for acquired rights of support for, 472.

SAVING for

- acts of authorities under certain local Acts, 422.
- admiralty and war office property, 415.
- audit of accounts before appointed day, 772.
- bye-laws under Sanitary Acts, 414.
- charters, local Acts, &c. in Local Government Act, 1888...530.
- collegiate bodies and government departments, 421.
- Contagious Diseases (Animals) Acts, 559.
- current proceedings, precepts or rates, 772.
- electric lighting works from bye-laws as to wires, &c., 570.
- existing actions, bye-laws, &c., contracts, &c., securities, &c., 773.
- liability of highway authority to repair, &c. public footpaths, 711.
- liability for main roads, 525.
- local boards in certain cases, 422.
- market rights, 229.
- matters under repealed enactments, 425.
- Metropolitan Board of Works, 421.
- mines, smelting works, and iron works, 420.
- navigation rights, 415, 419.
- obligations of district council as to water supply and sanitary works, 704.
- payments for drain from premises without district communicating with sewer within, 424.
- pending actions, 773.
- Postmaster-General's property from bye-laws as to wires, &c., 569.
- powers of Local Government Board as to alteration of parishes, 519.
- powers of sanitary authorities, notwithstanding change of name, 773.
- proceedings under local Acts, 422.
- provisions of leases and agreements as to rates, 302.
- right to use sewers purchased by local authority, 35.
- sanitary authorities existing at passing of Public Health Act, and their officers, 414.
- sewers of Commissioners of Sewers, &c., 32.
- special district rates, in certain cases, 411.
- style or title of corporation of borough, 718.
- valuation lists, 773.
- water rights, 420.
- wharves, quays, &c., 415.
- works and property of Crown, Commissioners of Sewers and Land Drainage Commissioners, 415.

SCALE of

- charges for water supply, fixing of, by Local Government Board, 88, 462.
- election expenses, 747.
- stamp duty under District Auditors Act, 1879...1103.
- votes of owners and ratepayers, 432.

SCHEDULES

- to Public Health Act, 1875, construction of, 411.

SCHEME. *See also SCHEMES, ETC., next page.*

- amending previous scheme, 520.
- dealing with site of buildings demolished under Part II. of Housing of Working Classes Act, 1890...627 *et seq.*
- under Local Government Act, 1888, what it may contain, 519, 520.
- as to parochial charity, powers of parish council as to, 712.

[117]

INDEX.

SCHEME FOR DEMOLITION OR RECONSTRUCTION OF UNHEALTHY HOUSES,

- award of costs by parliament in connection with, 629.
- compensation for lands acquired under, 630 *et seq.*
- completion of, on default of local authority, 629.
- confirmation of, 629.
- contribution towards expenses of, in London, 637.
- dwelling accommodation for working class displaced by, 630.
- execution of, 629.
- extinction of rights of way, &c. over lands included in, 629.
- loans for purposes of, 633, 637, 698.
- making of, 628.
- modification of, 629.
- notice of, 628.
- order of Local Government Board sanctioning, 628.
- petition against, 629.
- powers of London county council as to, 636, 637.
- purchase of lands included in, 628, 629.
- secretary of state may decide whether case in London to be dealt with by, or by scheme under Part I. of Act of 1890...648, 649.

SCHEME FOR IMPROVEMENT OF UNHEALTHY AREA,

- accommodation for working classes displaced to be provided for in, when, 606, 607; appropriation or acquisition of land for accommodation of persons displaced under, 614.
- acquisition of land under, 611—614, 663—672.
- circulars and instructions of Local Government Board for provisional order confirming, 1515, 1516, 1521.
- compensation for lands compulsorily acquired under, 612, 613.
- completion of, on failure by local authority, 609.
- confirmation of, 604—606.
- execution of, by local authority, 608.
- extinction of rights of way and other easements over lands acquired under, 614.
- limit of area to be dealt with in London by, 648.
- local inquiry by confirming authority as to, 611.
- to be made, when, 601.
- modification of, 610.
- notice as to, 603; notice to be given of intention to take fifteen or more houses under, 609; order of Local Government Board prescribing forms of notices, &c., as to, 1492.
- requisites of, 602, 603.
- secretary of state may determine whether case in London to be dealt with by, or under Part II. of Act of 1890...648, 649.

SCHOOL,

- house includes, 15.
- room, use of—for committees or officer appointed by district council to administer public funds, or for meetings of candidates, 699; for elections under Local Government Act, 1894...745; for purposes in connection with allotments, 1281.

SCHOOL FOR SCIENCE AND ART ACT, 1891. *See also* PUBLIC LIBRARIES ACTS.

- transfer to local authority under, of school for science and art or literary or scientific institution, 1301.

SCIENCE AND ART,

- provision of school for, under Public Libraries Acts, 1323.
- transfer to local authority of school for, 1301.

SCIENTIFIC

- institution, transfer of, to local authority, 1301.

SCILLY ISLES,

- application to, of Local Government Act, 1894...764.

INDEX.

SCOTLAND,

- application to, of Housing of Working Classes Act, 1890... 655—658, 671, 674.
- application to, of Infectious Disease (Notification) Act, 1889...546.

SEALING

- of contracts, when required, 238.

SEAMEN'S

- lodging-houses, bye-laws as to, 1345.

SEARCH WARRANT,

- grant of, 140; under Sale of Horseflesh, &c. Regulation Act, 1889...1259.

SECONDARY ACCESS

- to house, bye-laws may require, 205 *n*, 578.

SECRETARY OF STATE,

- approval by, of promotion or opposition to bill in parliament, 1001.
- copy to be sent to, of resolution adopting Part IV. of Public Health Acts Amendment Act, 1890...562.
- definition of term, 527.
- determination by, whether case to be dealt with under Part I. or Part II. of Housing of Working Classes Act, 1890...648, 649.
- local inquiries by, under Part. I. of the Housing of Working Classes Act, 1890...604, 606, 611; under Act of 1890 generally, 653.
- order of, abolishing fair, 972; altering date for holding fair, 1005.
- provisional order of, for confirming improvement schemes, 604—606.
- transfer to Local Government Board of certain powers of, 454, 455, 987, 989.

SECTION

- of private street works, preparation and deposit of, 176, 682, 683.

SECURITY,

- for costs of election petitions, 1135.
- for loans of urban authority, 314, 318; of rural authority, 315.
- for loans raised for less period than sanctioned, validity of, 412.
- to be given by officers, when, 267.
- for performance of contract, 238.
- under repealed Acts, saving for, 425.
- requisitioners of meeting of owners and ratepayers may be required to give, 439.
- of reservoirs, 935.
- saving for existing, 773.

SEIZURE

- of unsound meat, &c. 136; penalty for obstructing, 140.

SEPARATE RATES,

- appeals against, 311.
- collection of, 312.
- for general expenses in part of parish, 311.
- making, assessing, and levying of, 311.
- for special expenses, reduced assessment to, of certain properties, 311, 548, 679.
- surplus of, to be paid to rural authority, 312.

SERVICE of

- compulsory purchase order on owner, lessees and occupiers, 247, 706; upon persons having rights of common, 247.
- notice as to improvement scheme upon owners, &c., 603.
- notice of intention to construct sewage works without district, 62.
- notices, orders, &c.—mode of, 359; under Part II. of Housing of Working Classes Act, 1890...639; on local authority under Act of 1890...654.
- provisional order confirming improvement scheme, 605.

INDEX.

SETTLED LAND ACT, 1882,

amendment of, as regards erection of dwellings for working classes, 649.

SETTLEMENT

of boundaries of place not having known and defined boundary, 373; of boundaries of urban district, 379, 517.

SEVERANCE

of properties acquired under improvement schemes, 665.

SEWAGE,

disposal of—powers for, 58; dealing with lands appropriated for, 60, 61; liquids interfering with, sanitary authorities not required to receive into sewers, 1064.

lands, mortgage of, for loans, 318.

pollution of streams by—proceedings for prevention of, 96; provisions of Rivers Pollution Prevention Act, 1876, as to, 1059—1061; rights of private persons against local authorities for, 41 *n*, *et seq*.

purification of, before discharge into streams, 40.

supply of, 58.

works, nuisance arising from, cannot be dealt with summarily, 109 *n*.

works without district—powers of local authority, as to, 38; provisions as to, 61—63.

SEWAGE UTILIZATION ACT, 1867,

dissolution of joint boards constituted under, 412.

SEWER,

alteration of, 49, 223, 892, 893.

building over, penalty on unauthorized, 57, 58.

under canals, rivers, &c., substitution of new, 419.

chemical refuse, steam, &c., not to be turned into, 570.

cleansing of, 50.

of collegiate bodies, saving for, 421.

commissioners of. *See* COMMISSIONERS OF SEWERS.

communication—of drains with, 51, 52, 424, 572; of drains of new houses with, 57; of sewers with sewers of adjoining district, 60.

construction of—by local authority, 36; by local authority on agreement with owner, 573; powers of local authority as to, 38; precautions during, 223, 892, 893; in lieu of requiring drain to communicate with existing sewer, 54; prohibition of construction of, so as to pollute stream, 40; so as to create nuisance, 50.

covering in of, 49, 50.

default of local authority as to, proceedings on complaint of, 394 *et seq*.

definition of, 18.

discontinuance of, 49.

entry on lands for purpose of ascertaining course of, 400.

expenses of rural authority in connection with, to be special, 308.

injurious matters not to pass into, 570.

map of, 51.

new, power of local authority to require houses to be drained into, 56.

pollution of stream by use of, prohibition of, 40. *See also* RIVERS POLLUTION

PREVENTION ACT, 1876.

purchase of, by local authority, 35.

repair of, by local authority, 36; precautions during, 223, 892, 893.

saving for powers of government departments as to, 421.

support of, over mines, 470, 471.

use of, by owners and occupiers without district, 53.

ventilation of, 50.

vesting of, in local authority, 32.

without district of local authority—vesting of, 32; communication of, with sewers within district, 53.

INDEX.

SEWERAGE,

of contributory place, expenses to be special, 308.
of new streets, bye-laws as to, 204, 205.
notice of plan of, to be given by rural to parish council, 714.
of private streets, 176, 682. *See also* PRIVATE STREET WORKS.
system, map of, 51.
united district for purpose of, 379.
works, support of, 470, 471.

SEWERAGE BOARD. *See also* JOINT BOARD.

under Public Health Act, 1848, and Sewage Utilization Act, 1867, dissolution
and reconstitution of, 412.
vesting of sewers constructed by, or transferred to, 32.

SEXES,

separation of, in common lodging-houses, 102; in lodging-houses, 106.

SHED

intended for human habitation—bye-laws as to, 484, 485; entry of, 484; nuisances in, 484.

SHELTER,

for cabmen, provision and regulation of, 589.
temporary, provision of, for persons removed for disinfection of house, 557.

SHIPS,

application to—of certain provisions as to nuisances, infectious diseases, and hospitals, 477; of Infectious Disease (Notification) Act, 1889...544.
cleansing or disinfection of, 479 *n*.
entry of, for purposes of regulations as to epidemic diseases, 152.
infected, penalty for letting of, without disinfection, 479 *n*.
liable to quarantine within 6 Geo. IV. c. 78...454.
nuisances on, 129, 130, 477.
quarantine of, 783—793.
regulations of Local Government Board as to cholera, &c., may provide for detention, &c., of, 534, 535.
removal to hospital of infected person on, 143, 144, 477.

SHOOTING GALLERIES,

bye-laws for preventing danger from, 588.

SHOP HOURS ACTS,

text of Act of 1892...1332; of Act of 1893...1338; of Act of 1895...1353.

SHOWS,

grant of park for use of, 591.

SICK,

agreements for reception of, 148.
hospital for, provision of, by local authority, 148. *See also* HOSPITAL.

SINKING FUND,

establishment, application and investment of, 316, 317.
proceeds of sale of superfluous lands may be carried to, 244.
under Local Loans Act, 1875...1022.

SITE of

buildings demolished under Part II. of Housing of Working Classes Act, 1890,
scheme for, 627 *et seq*.
obstructive building demolished, 627.

INDEX.

SLAUGHTER-HOUSE,

- bye-laws as to, 234, 894; confirmation of, 475.
- change of occupation of, to be notified, 583.
- definition of, 20.
- for horses, licensing of, 728, 730, 781, 782, 796, 894, 895.
- licences for—duration of, 583; revocation of, on conviction for sale of bad meat, 583, 895.
- licensing of, 894, 895; notice of, to be affixed on premises, 234.
- nuisance arising from, 134.
- provision of, by urban authority, 234.
- registration of, 894; notice of, to be affixed on premises, 234.
- regulation of, 234, 894.

SLEEPING,

- rooms over privy, &c., not to be used for, 580.

SMALL-POX,

- memorandum of Local Government Board as to precautions against, 1435.

SMEETING WORKS,

- saving for, 424.

SMOKE,

- black, emission of, from chimney, a nuisance, 108, 109.
- nuisance arising from non-consumption of, 108, 109; duty of local authority as to, 115; powers of entry for enforcing provision as to, 124.

SNOW,

- bye-laws for preventing nuisance from, 72.

SOAP-MAKER,

- nuisance arising from trade of, 134.
- restrictions on establishment of trade of, 131.

SOLICITOR,

- taxation of bill of costs of, 331.

SOUTH WALES

- roads, adaptation of Local Government Act, 1888, to, 498, 499.

SPACE,

- about buildings, bye-laws as to, 204, 205.
- open. *See* OPEN SPACES.

SPECIAL

- Act, meaning of, in incorporated Acts, 410.
- case, statement of, by quarter sessions on appeals, 364.
- district rates, saving for, 411.
- drainage district—constitution of, 378, 379; to be a contributory place, 379; dissolution of, 371.

SPECIAL EXPENSES,

- apportioned cost of works for common benefit of two or more contributory places, to be, 308.
- contributions for—mode of raising, 310, 311; in like manner as general expenses, 729; to be shown separately in precept, 310.
- expenses incurred in carrying out order as to polluted well, to be, 97.
- expenses of rural authority in executing Public Health Acts Amendment Act, 1890, may be declared to be, 592.
- rate—appeals against, 311; assessment of certain properties to, at one-fourth, 311, 548, 679; collection of, 312; making, assessing, and levying of, 311; mortgage of, as security for loans, 315; surplus of, to be paid to rural authority, 312.
- to be separate charge on contributory place, 309.
- what are, 307.

INDEX.

SPECIFICATION

of private street works, 683, 686, 692.

SPOUTS,

affixing of, to houses, 891.

SPRING,

included in term "waterworks," 21.

SQUARE,

protection, &c., of garden in, 933.

street includes, 12.

taking over of enclosed garden in, 227 *n*, 933.

STABLES,

removal of manure periodically from, 76.

STAGNANT

water in dwelling-house, penalty for, 74.

STAIRCASES

of new buildings, bye-laws as to, 205 *n*, 578.

STALLAGES

in markets, 229, 232, 233, 860, 861.

STAMP DUTY,

on award of arbitrator, 255 *n*.

on deed of submission to arbitration, 253 *n*.

under District Auditors Act, 1879...1101—1103.

STAND-PIPES,

water rates may be charged for water supplied from, 462.

STANDING ORDERS,

deposit of plans, &c., under, 248 *n*, 1518, 1522, 1525.

STANDS, for

hackney carriages, 922.

horses and donkeys, fixing of, 236.

omnibuses, 1262.

STATUES,

erection, &c., of, in streets and public places, 590.

STEAM

not to be turned into sewers, 570, 571.

whistles, regulation of use of, 998.

STIPENDIARY MAGISTRATE,

sitting of, as summary jurisdiction court, 335 *n*.

STOCK,

creation and issue of, by urban authority, 599.

debenture, under Local Loans Act, 1875...1019.

regulations of Local Government Board as to, 599, 600.

transfer of, on change of name of authority entitled, &c., 778.

STOPPING UP, of

highway, 709, 710.

right of way—powers of district council as to, 725; representation as to, may be made by parish council, 726; county council may exercise powers of defaulting district council as to, 727.

STOREY,

meaning of term "topmost storey," in bye-laws, 214 *n*.

INDEX.

STORM WATERS,

exclusion of, from sewer communicating with sewers of adjoining district, 60.

STREAM,

included in term "waterworks," 21.

pollution of—proceedings for preventing, 96; powers of county council to enforce Rivers Pollution Prevention Act, as to, 499. *See also* RIVERS POLLUTION PREVENTION ACT, 1876.

sewage to be purified before discharge into, 40.

throwing into, of rubbish, filth, &c., restrictions on, 592.

STREETS. *See also* HIGHWAY and ROAD.

alteration of, by urban authority, 169.

annoyances in, provisions of 10 & 11 Vict. c. 89, as to, 908—914.

arch, cellar or vault under, repair of, 586.

back, bye-laws as to provision of, 578.

breaking up of—penalty for, without consent, 169; for laying water-pipes, 83, 84, 876, 877; for laying gas-pipes, 863—865; for laying tramway, 954.

building line in, regulation of, 201, 204, 531.

building of vault or arch under carriage way of, penalty for, 58.

cleansing of—duty of local authority as to, 69, 70; power to make bye-laws as to, 71, 72.

construction of, precautions during, 223, 892, 893.

definition of, 12—15, 617, 681.

division of, into rating districts, 284.

exposure in, of infected person, penalty for, 144, 145.

fencing of, by urban authority, 169.

gardens, &c., in, protection of, 933, 934.

gratings in surface of, repair of, 586.

hoards to be set up during building in, 585, 892.

improvement of, purchase of premises for, 201.

laid out under improvement schemes, to be highways, 608.

level of, alteration of, by urban authority, 169; right of adjoining occupier to compensation on, 172 *n*.

lighting of, 224.

line of, 201, 204, 205, 223, 531, 888—891.

naming of, 223, 888.

new—bye-laws with respect to, 204, 205; cases deciding what are, 206 *n*—211 *n*; continuing offences against bye-laws as to, 217; purchase of premises for, 201; removal of works contrary to bye-laws, 205, 217; width of, meaning of term "width," 217 *n*.

nuisances in, 235; provisions of 10 & 11 Vict. c. 89, as to, 908—914.

obstructions in, 235; provisions of 10 & 11 Vict. c. 34, as to, 888—891; of 10 & 11 Vict. c. 89, as to, 908—914.

paved, when to be deemed, 565.

private—declaration of, as highway, 198, 589, 689, 690; paving, &c., of, power to compel, 176; recovery from owner of apportioned cost of paving, &c., 176; exemption of incumbent of church from cost of paving, &c., 197; what are, within sect. 150...176 *n*—181 *n*. *See also* PRIVATE STREET WORKS.

refuges in, erection of, 588.

repair of—by urban authority, 169; precautions during, 223.

repairable by inhabitants at large, what are, 181 *n*, 182 *n*.

sanitary convenience accessible from, not to be erected without consent, 575, 576.

sewer may be constructed under, 38.

statues and monuments in, erection, &c., of, 590.

trees in, vesting of, in urban authority, 169; planting, &c., of, by urban authority, 590.

vesting of, in urban authority, 169; meaning of vesting, 170 *n*, *et seq*.

watering of, 69, 70.

wires, &c., along or across, bye-laws for preventing danger from, 567.

STRUCTURE

of new buildings, bye-laws as to, 204.

SUBSIDENCE

caused by brine pumping. *See* BRINE PUMPING, ETC.

SUBURBAN COMMONS,

powers of urban authority as to, 1046, 1047. *See also* COMMONS ACT, 1876.

SULPHURIC ACID WORKS. *See* ALKALI, ETC., WORKS REGULATION ACTS.

SUMMARY

proceedings. *See* PROCEEDINGS.

SUMMARY JURISDICTION ACTS,

application of, to summary proceedings under Act, 333.
definition of, 23.

SUMMARY JURISDICTION COURT,

appeals to quarter sessions against orders, &c., of, 363 *et seq.*
appeals against order of, as to nuisances, 123.
appointment by, of receiver, 321.
arbitration by, on claims under 20 $\frac{1}{2}$., 256.
constable may be authorised by, to examine premises and execute order as to nuisances, 127.
constitution of, 333.
definition of, 22.
determination by, of—difference as to water consumed when supplied by meter, 86; dispute as to charges of medical practitioner for attendance on board ship, 153; objections to private street works, 684.
order of, as to—apportionment of cost of works of water supply to more than one house, 460; authorising execution by rural authority of works of water supply to house, 459; cleansing of offensive ditch, 75; closing cellar dwelling, 99; closing dwelling-house unfit for habitation, 121, 122, 619, 620, 676; closing house on two convictions for overcrowding, 129; closing polluted well, 96; commitment of defaulting officer, 270; dangerous telegraph, &c., wire exempted from bye-laws, 569; authorising entry on lands, 400; nuisances, 120, 122, 123, 127; form of order as to nuisances, 441, 442; nuisance from offensive trade, 134; occupation of house on refusal of rural authority to give certificate as to water supply, 461; payment of rates, 339; requiring occupier to permit owner to execute works, 401; form of such order, 441.
proceedings before, for offences, penalties, &c., 333.
settlement by, of disputed compensation for damage by local authority, 402; of dispute as to communication of sewer or drain without district with sewer within, 53.
stipendiary magistrate sitting as, 335 *n.*
summoning before, of persons creating nuisance, 119; form of summons, 441; of defaulter in payment of rates, 339.
summons by, of owner or occupier of polluted well, 96.

SUMMONING OFFICER

of meeting of owners and ratepayers—to be chairman of meeting, 439; to be returning officer at poll, 440; who to be, 437.

SUMMONS,

as to cleansing of offensive ditches, 75.
of defaulters in payment of rates, 339.
of defaulting officers, 269, 270.
on owner or occupier of polluted well, 96.
of person against whom complaint as to nuisance made, 119; form of summons, 442.
of persons causing nuisance by offensive trade, 134.

INDEX.

SUNDAYS,

provisions as to, in Local Government Act, 1894...763.

SUPERFLUOUS LANDS,

letting of, 249.

sale of, 244, 838, 839, 973, 1224.

SUPERIOR COURT,

definition of, 656.

proceeding in, against nuisances, 128.

proceedings not to be moved into, 350.

SUPPLY

of medicine, by local authority, 151.

of water. *See* WATER SUPPLY.

SUPPORT,

definition of, in Support of Sewers Act, 1883...470.

for sanitary works over mines—provisions as to, 470, 471; limited right of, 472; saving for acquired rights, 472.

SURCHARGES,

by auditor, 327, 328; remission of, by Local Government Board, 923; removal of, into Queen's Bench, 327, 798; notice of, to be given to person surcharged, 942.

SURPLUS

of separate rates, payment of, to rural authority, 312.

SURVEYING,

entry on lands for purposes of, 400.

SURVEYOR,

appointment of, by urban authority, 260.

apportionment by, of expenses of private street works, 176, 341, 342, 682, 687.

definition of, 6.

entry of, on premises to examine drains, &c., 68.

estimate of, to be obtained before entering into contracts, 238.

inspector of nuisances and, one person may be, 264.

of local board, provisions of accounts, order as to, 1369.

ministerial acts required to be done by surveyor of highways, to be done by, 157.

platforms, &c., for public occasions, to be constructed to satisfaction of, 588.

preparation by, of plans, &c., of private street works, 682.

remuneration of, 260.

report of, as to—necessity for carrying sewers through private lands, 38;

necessity for providing privy accommodation, 63, 65; size, &c., of drain, 54, 57; house without proper water supply, 87; most advantageous mode

of contracting for work, 238.

tenure of office of, 260.

SURVEYOR OF HIGHWAYS,

ministerial acts to be done by, to be done by surveyor of urban authority, 157.

notice to be given to, of intention to construct sewage works without district, 62.

objection by, to sewage works without district, 62.

recovery by, of arrears of highway rate on constitution of urban district, 165.

transfer to rural district councils of powers, &c., of, 723.

urban authority to be, 157.

SWIMMING BATHS. *See* BATHS AND WASHHOUSES ACTS.

SWINE,

penalty for keeping, in dwelling-house, or so as to be nuisance, 74.

INDEX.

SWINGS,

bye-laws for preventing danger from, 588.

TALLOW MELTER,

nuisance arising from trade of, 134.
restrictions on establishment of trade of, 131.

TANK,

closing of polluted, 96.
included in term waterworks, 21.

TAXATION of

solicitors' bills of costs, 331.

TAXES,

annual return as to local, 929, 1077.
duplicate of return as to, to be sent to Local Government Board, 988.

TEA,

examination of, on importation, 1016.

TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892,

acquisition of land for purposes of institution, 1316, 1317.
definition of institution, 1316.
governing body of institution, 1316.
institution to be public, 1317.
provisions of Mortmain and Charitable Uses Acts not to apply to assurances of land, 1317.
sale or exchange of site of institution, 1317.

TECHNICAL INSTRUCTION,

application to, of balance of local taxation (customs and excise) duties, 1278, 1282.
appointment of committees for purposes of, 1270.
audit of accounts of aided schools, 1271.
definition of technical and manual instruction, 1272.
loans for purposes of, 1271.
local authority for purposes of, definition of, 1271.
power of local authority to supply, or aid the supply of, 1269, 1282.
rate for purposes of—definition of, 1271 ; limit of, 1270.
text of Act of 1890...1269—1272 ; of Act of 1891...1282.

TELEGRAPH OR TELEPHONE

wires, bye-laws as to, 567.

TENANT,

division of expenses between landlord and, in certain cases, 411.

TENANTS COMPENSATION ACT, 1890,

text of, 1277.

TENDERS

for contracts to be invited, 238.

TENT,

application to, of Infectious Disease (Notification) Act, 1889...544.
intended for human habitation—bye-laws as to, 484, 485 ; entry of, 484 ;
nuisances in, 484.

TENURE OF OFFICE of

inspector of nuisances and medical officer of health, when salary repaid by
county council, 263.
officers of urban authority, 260.

[127]

INDEX.

TERM OF OFFICE of

- guardians, 717.
- members of committees of non-borough district council or parish council, 752.
- member of a joint committee of parish and district councils, 753.
- member of joint board, 380.
- rural district councillors, 721.
- urban district councillors, 720.
- vice-chairman of district council or board of guardians, 755.

TESTING

- of gas, 977, 980.
- of petroleum, 991, 1106—1108.

THAMES,

- protection of conservators of, 691.
- saving for conservators of, 1069.

TITHES,

- assessment of—to general district rate, 283 ; to special expenses rate, 311.

TOLLS,

- annual return as to, 929, 1077.
- market—fixing, &c. of, 229, 232, 233, 860, 861 ; purchase of, by urban authority, 269.
- on roads in Isle of Wight, 497.
- on roads in South Wales, abolition of, 498.
- on tramways, 962.

TOMBSTONES,

- removal of, from disused burial ground, 1213.

TOWN GARDENS PROTECTION ACT, 1863,

- text of, 933, 934.

TOWNS IMPROVEMENT CLAUSES ACT, 1847,

- definitions in, 887, 888.
- incorporation with Public Health Act—of certain provisions of, 223 ; of provisions as to slaughter-houses, 234.
- provisions of, as to—improving line of streets and removing obstructions, 888—891 ; naming of streets and numbering of houses, 888 ; precautions during construction of sewers, streets, and houses, 892, 893 ; ruinous or dangerous buildings, 891, 892 ; slaughter-houses, 894, 895.
- repeal of section 80 of, 585.

TOWNS POLICE CLAUSES ACT, 1847,

- definitions in 907, 908.
- incorporation of, with Public Health Act, 1875...235.
- provisions of, as to—fires, 914, 915 ; hackney carriages, 916—922 ; obstructions and nuisances in streets, 908—914 ; places of public resort, 915, 916 ; public bathing, 922, 923.

TOWNS POLICE CLAUSES ACT, 1889,

- text of, 1260—1262.

TRAFFIC,

- extraordinary, on highways, 1094.
- in streets, regulation of, 908, 909.

TRAMWAY,

- public bridge over or subway under, construction or adoption of, 166.

TRAMWAYS ACT, 1870,

- bye-laws under, 962—964, 971.
- carriages on tramways, 958.
- construction of tramways under, 953—958.
- definitions in, 948.

INDEX.

TRAMWAYS ACT, 1870—*continued.*

- discontinuance of tramways, 960.
- expenses and loans of local authority under, 952, 953.
- inquiries by Board of Trade under, 967.
- insolvency of promoters, 960.
- lease by local authority of tramway constructed or acquired by them under, 952, 971.
- licenses may be granted to third parties to use tramways, 959.
- local authority not themselves to work tramway, 952.
- offences under, 964, 965.
- provisional orders under, 949—953, 969—971.
- purchase of undertaking by local authority, 961.
- rules under, 967; confirmation of rules and regulations made by urban authority under section 40 of, 475.
- text of, 948—971.
- tolls, 962.

TRANSFER

- to council of borough, of powers of improvement commissioners or local board, 408; of powers, &c. under local Acts, 408, 1151.
- of county bridges to county borough councils, 508, 509.
- to county councils of powers, &c.—of defaulting authority under Part II. of Housing of Working Classes Act, 1890...635; of defaulting authority in respect of allotments, 1280, 1281; of defaulting district council, 713, 726; of smaller quarter sessions boroughs, 511; general provisions as to, in Local Government Act, 1888...506, 507; in Local Government Act, 1894...758.
- to district council of certain powers of justices, 727, 728.
- of hospital by guardians to rural authority, 148 *n.*
- of license for music and dancing, 597.
- to local authority—of powers of turnpike trustees, 411; of open spaces or disused burial grounds, 1111—1113, 1213, 1274, 1275; of schools for science and art, or literary or scientific institution, 1301.
- to Local Government Board of powers, &c. of—Board of Trade under Alkali Acts and Metropolis Water Acts, 455; privy council, 486, 987, 989; secretary of state, 455, 987, 989; treasury under Baths and Washhouses Acts, 455.
- of mortgage, 320; form of transfer, 446.
- to parish council of—legal interest in parish property, 700; powers, &c. under adoptive Acts, 749; powers, &c. of allotment managers, wardens, &c., 702; powers, &c. of churchwardens, 700; powers, &c. of guardians as to parish property, 701; certain powers, &c. of overseers, 701; powers, &c., of vestry, 700; public property held by trustees, 711.
- of powers, &c., on alteration of areas, 376, 377.
- of powers, &c., settlement by provisional order of differences as to, 398; summary proceedings for determining questions as to, 762.
- of property and liabilities consequent on transfer of powers and duties, 759, 760.
- of rentcharges granted for advances in respect of private improvement expenses, 323.
- to rural district council—of powers of rural sanitary authority and highway authority, 723; of allotments by trustees or wardens, 1225.
- of stock, consequent on change of name of authority entitled, or on other authority becoming entitled to stock, 778.
- to urban authority of powers, &c., of—existing authorities under adoptive Acts, 749, 757; burial board, 454; local board or improvement commissioners acting as burial board, 408, 409.

TREASURER,

- clerk or partner not to be, 264.
- local board, accounts of, provisions of accounts order as to, 1369.
- payments to, by officers, 269.
- of rural authority, who to be, 263; remuneration of, 263; payment to, of half of penalty, 337.
- of urban authority, appointment, remuneration, and tenure of office of, 260; district fund account to be kept by, 278; payment to, of half of penalty, 337.

INDEX.

TREASURY,

definition of, 527.

transfer to Local Government Board of powers of, as to loans under Baths and Washhouses Acts, 455.

TREES

in streets—vesting of, in urban authority, 169; injury to, penalty for, 169; planting of, by urban authority, 590.

TRICYCLES

to be carriages within Highway Acts, 523.

regulations as to, 523.

TRIPLE-BOILER,

nuisance arising from trade of, 134.

restrictions on establishment of trade of, 131.

TRUSTEES,

definition of, 765.

of parochial charity—appointment of, by parish council, 711, 712; appointment of, in borough or other urban district divided into wards, 731; not to be beneficiaries, 713; term of office of, 712.

transfer to local authority of open spaces held by, 1274, 1275.

transfer to parish council of public property held by, 711.

TURNPIKE

road—to become main road, when, 1091; not included in term street, 12;

power of urban authority to undertake repair, &c. of, 166; transfer to

Local Government Board of powers of secretary of state, as to, 455.

trustees, transfer of certain powers of, to local authority, 412.

UMPIRE,

appointment of, 252; under Lands Clauses (Umpire) Act, 1883...1174.

award of, within what time to be made, 252; finality of, 253.

costs of reference to be in discretion of, 252.

declaration to be made by, 252.

production of documents to, and examination of witnesses by, 252.

UNDERTAKERS,

meaning of, in incorporated Acts, 410.

UNHEALTHY AREAS,

appointment of medical practitioner to inquire into, on default of medical officer of health, 610.

improvement scheme to be made for, when, 601; requisites of scheme, 602, 603; notice as to scheme, 603; confirmation of scheme, 604—606. *See also* SCHEME FOR IMPROVEMENT OF UNHEALTHY AREA.

official representation as to, 601; by whom representation to be made, 602.

provisions as to, 600 *et seq.*

UNHEALTHY DWELLINGS. *See* DWELLING-HOUSE UNFIT FOR HABITATION.

UNION,

alteration of area of, 734, 735.

of county borough with county, 516.

definition of, 5.

of districts, 379 *et seq.*; for appointment of medical officer of health, 382, 383.

officers, grants by county councils towards cost of, 506.

of new parishes constituted by Local Government Act, 1894...735.

of urban or rural districts and parishes, 516, 517.

INDEX.

UNITED DISTRICTS,

- for appointment of medical officer of health, 382, 383.
- formation of, 379; costs of formation, 380; contents of provisional order for formation of, 380.
- governing body of, constitution and incorporation of, 380. *See also* JOINT BOARD.
- purposes of, 379.

UNIVERSITIES,

- contributions of, towards certain expenses, 308.
- Oxford, representation of, on local board, 423, 424.
- rating of, 308.
- representation of, on council of borough, 515.
- water supply to colleges, &c. of, 94.

UNOCCUPIED

- premises—improvement rates on, to be paid by owner, 291; rating of, to general district rate, 283.

UN SOUND MEAT,

- condemnation of, 582.
- provisions as to, 136—141.
- provisions as to, to apply to all articles intended for food, 582.

URBAN AUTHORITY,

- definition of, in Local Government Act, 1888...527.

URBAN DISTRICT COUNCILS. *See also* DISTRICT COUNCIL; LOCAL AUTHORITY; and URBAN SANITARY AUTHORITY.

- accounts of, audit of, 754; to what date to be made up, 754; form of, 754.
- chairman of—election of, 427, 755; absence of, chairman to be chosen at meeting, 427; casting vote of, 428; to be *ex officio* justice of peace, 718.
- change of name of, 752.
- committees of, appointment, term of office and powers of, 752; rules as to proceedings of, 753, 774, 775.
- conferment upon—of power to appoint overseers and assistant overseers, and powers, &c. of overseers or parish council, 730, 731; of powers of vestry under Poor Rate Assessment and Collection Act, 732.
- consent of, to adoption of adoptive Act, 758.
- duties of, as to protection of rights of way and roadside waste, 725.
- employment of, as agent of county council, 759.
- ex officio* and nominated members of, abolition of, 719.
- expenses of, in execution of additional duties conferred by Local Government Act, 1894...728.
- Improvement Act Commissioners to be called, 4 *n*, 718.
- inability of, to act, powers of county council in case of, 755, 756.
- joint committees of parish or other district council and, appointment, term of office, powers and costs of, 753.
- local boards to be called, 4 *n*, 718.
- meetings and proceedings of, application to, of Public Health Act, 1875...755.
- See also* MEETINGS OF NON-BOROUGH DISTRICT COUNCIL.
- powers of, as to, maintaining rights of common, 725, 726.
- transfer to—of certain powers of justices, 727, 728; of powers, &c. under adoptive Acts, 749, 757.
- urban sanitary authorities to be called, 718.
- vice-chairman of, appointment, term of office, and powers of, 755.

URBAN DISTRICT COUNCILLORS,

- acceptance of office by, 746, 1463.
- disqualification for office of, 739—744.
- election of, to be under rules, 720; text of rules, 1439. *See also* ELECTIONS REGULATED BY RULES, ETC.
- electors of, who to be, 720.
- qualification of, 719.
- re-eligibility of, 746, 1464.
- resignation of office by, 746, 1464.
- retirement of, 720; elected at first elections under Act of 1894...766, 767.

INDEX.

URBAN DISTRICT COUNCILLORS—*continued.*

term of office of, 720.

vacancy (casual) in office of, declaration and notification of, 743, 744; filling of, 746, 1464.

vacation of office of, by absence, 743.

URBAN DISTRICTS. *See also* LOCAL GOVERNMENT DISTRICT *and* IMPROVEMENT ACT DISTRICT.

boroughs not being, provisional orders dealing with, 515.

boundaries of—settlement of disputes as to, 379; alteration or definition of, 516, 517.

change of name of, 752.

constitution of, 516, 517, 751.

in more counties than one, to be deemed in county containing larger population, 514.

definition of, 545.

division of—into rating districts, 284; into wards for election purposes, 516, 517.

excluded part of parish to be deemed part of, for highway purposes, 294; to cease to be part of, when rural authority become highway authority, 295 *n*, 724.

extension or diminution of, 516, 517, 751.

houses in, not to be built, re-built or occupied without drains, 57.

Improvement Act districts to be called, 4 *n*, 718.

local government districts to be called, 4 *n*, 718.

parish in more than one, each part to be separate parish, 733, 734.

urban sanitary districts to be called, 718.

URBAN POWERS,

rural authority may be invested with, 378, 562, 681; by general order, 725; county or parish council may apply for, 725.

URBAN SANITARY AUTHORITY. *See also* LOCAL AUTHORITY; URBAN DISTRICT COUNCILS.

accounts of, audit of, 325 *et seq.*, 754.

adoption by, of Baths and Washhouses Acts, 28; of Labouring Classes Lodging-houses Acts, 28.

appointment by, of officers, 260.

as burial board, 925, 930—932.

to be called urban district council, 718.

committees of—appointment of, 272, 752; meetings and proceedings of, 274, 753, 774.

consent of. *See* CONSENT.

constitution of, 24.

contracts of, 238 *et seq.*

council of borough not being, provisional order dealing with, 515.

being council of borough—audit of accounts of, 325; mode of defraying expenses of, 276; proceedings of, 271.

description of, 24.

duties of—as to provision of fire-plugs, 92; as to nuisance from offensive trade, 134; as to acquisition of land for allotments, 1216.

execution by, of Baths and Washhouses Acts and Labouring Classes Lodging-houses Acts, 28.

existing at passing of Public Health Act, 1875, saving for, 414.

expenses of, mode of defraying, 276; alteration of mode in certain cases, 278.

investment of, with powers under Public Health (Water) Act, 1878...463.

liability of, for accidents caused by non-repair or improper condition of highways. 158 *n*—164 *n*.

local authority includes, 6; to be local authority under Bakehouse Regulation Act, and Artizans' and Labourers' Dwellings Acts, 28.

main roads may be claimed to be retained by, 492; payments by county council when roads so retained, 492—494.

meetings of, 271, 272. *See also* MEETINGS OF NON-BOROUGH DISTRICT COUNCIL.

offices of, provision of, 271.

opposition of, to provisional order under sect. 24 of Railway and Canal Traffic Act, 1888...1284.

URBAN SANITARY AUTHORITY—*continued*.

- powers and duties of, 28.
- powers of, as to—bye-laws with respect to new streets and buildings, 204, 205, 578; lighting district, 224; making new public roads, 165; markets, 229 *et seq.*; provision of receptacles for deposit of rubbish, 73; public bridges over canals, &c., 166; public walks and pleasure grounds, 226—229; under Railway and Canal Traffic Acts, 1235, 1237, 1246; regulation of building line, 201, 204, 531; removal of accumulations of filth, 75; repair, &c., of turnpike roads and county bridges, 166.
- powers of, may be conferred on rural authority, 378, 562, 681, 725.
- purchase by—of land for street improvements, 201; of gas undertaking, 225, 226.
- regulations of, as to duties and conduct of officers, &c., 260.
- report to be made to Local Government Board and published, 275.
- stock may be created and issued by, 599.
- to be surveyor of highways, 157.
- transfer to—of powers, &c., under local Acts, 28; of powers, &c., of local board or improvement commissioners as burial board, 408, 409; of powers, &c., of burial boards, 454.
- vesting in, of powers of surveyor of highways and vestry under Highway Acts, 157; of property, &c., of inspectors under Lighting and Watching Act, 226; of recreation-ground purchased with compensation money paid for common lands, 1129; of streets, &c., 169.

URBAN SANITARY DISTRICTS,

- to be called urban districts, 718.
- to consist of what, 24.
- constitution of, 24.
- inhabitants of, not liable to rates for roads without district, 165.

URINALS. *See also* SANITARY CONVENIENCE.

- nuisance from, 108.
- provision of, by urban authority, 66, 67.

VACANCY,

- casual—in district council or board of guardians, filling of, 746, 1464, 1491; caused by person unseated on petition, 1143; in joint board, 380; in parochial committee, 274.
- in district council, declaration and notification of, when caused by disqualification or absence, 743, 744.
- in district council not to invalidate proceedings, 428.

VACATION

- of office by absence from meetings, 743.

VAGRANTS,

- resorting to common lodging-houses, reports as to, 103.

VALUATION LIST,

- alterations in, corresponding alteration in general district rate, 300 *n*.
- appeals or objections in respect of, by parish council, 701.
- inspection of, for purposes of making general district rate, 291.
- making and revision of, 285 *n*.
- properties in, to be rated to general district rate, 282.
- saving for, in Local Government Act, 1894...773.

VALUE,

- increase of value of adjoining buildings by demolition of obstructive building, 626.
- of lands compulsorily acquired under improvement schemes, how to be assessed, 612, 613.

VAN

- intended for human habitation—application to, of Infectious Disease (Notification) Act, 1889...544; bye-laws as to, 484, 485; entry of, 484; nuisances in, 484.

INDEX.

VAULT,

- building of, under carriage-way of street, penalty for, 58.
- in church, prohibition of construction of, 453.
- sewers constructed under, 38.
- stagnant waters in, penalty for, 74.
- under streets, repair of, 586.

VENTILATION

- of common lodging-houses, bye-laws as to, 102.
- of lodging-houses, bye-laws as to, 106.
- of new buildings, bye-laws as to, 204, 205.
- regulations as to epidemic diseases may provide for promotion of, 151.
- of sewers, 50.

VESSELS. *See also* SHIPS.

- application to, of Infectious Disease (Notification) Act, 1889...544.
- quarantine of, 783—793; liable to quarantine within 6 Geo. IV. c. 78...454.
- regulations of Local Government Board as to cholera, &c., may provide for detention, &c. of, 534, 535.

VESTING of

- main roads and drains thereto in county council, 494.
- powers of surveyor of highways and vestry under Highway Acts in urban authority, 157.
- property of sanitary authorities under Sanitary Acts in local authorities, 30.
- property, &c. of lighting inspectors in urban authority, 226.
- public cisterns, wells, pumps, &c., in local authority, 89.
- sewers in local authority, 32.
- streets in urban authority, 169; meaning of vesting, 170 *n*, *et seq*.

VESTRY,

- definition of term, 765.
- highway rate made by urban authority need not be laid before, 296.
- powers of, under Poor Rate Assessment and Collection Act, 1869, may be conferred on urban district council, 732.
- room, provision of, by parish council, 701.
- transfer to parish council—of powers, &c. of, 700; of powers of, to appoint trustees of parochial charity, 711.
- vesting in urban authority of highway powers of, 157.

VESTRY (METROPOLITAN),

- contributions by, or to, in respect of schemes under Part II. of the Housing of Working Classes Act, 1890...637.
- disqualification for office of member of, 744.
- loans of, for purposes of Part II. of Housing of Working Classes Act, 1890...636.

VETERINARY SURGEON,

- inspection of dairy cows by, 550.

VICE-CHAIRMAN

- of board of guardians and non-borough district council—appointment of, from outside, 717; appointment, term of office, and powers of, 755.

VILLAGE GREENS,

- holding or management of, by parish councils, 701.
- improvement and regulation of, by parish councils, 703.
- nuisances, &c. on, 114 *n*, 1056.

VISITATION,

- house to house, regulations as to epidemic diseases may require, 151.

VOTES

- of owners and ratepayers—counting of, at poll, 436; scale of, 432.

INDEX.

VOTING

- at elections regulated by rules under Local Government Act, 1894; rules to prevent voting in more than one parish or ward, 744. *See also* RULES AS TO ELECTIONS, pp. 1439—1491.
- of owner either personally or by proxy, 443.
- papers at poll of owners and ratepayers, 434, 435; form of, 449.

VOUCHERS,

- deposit of, for inspection prior to audit, 326, 327.
- production of, to auditor, 326, 327.

WAGGONS,

- in streets, offences in connection with, 911.

WALKS,

- public, provisions as to, 226—229.

WALLS

- of new buildings, bye-laws as to, 204, 205.
- party, meaning of term in bye-laws, 214 *n*.

WAR OFFICE,

- powers of, as to Aldershot district council, saving for, 756.
- property, saving for, 415.

WARDS,

- lists and register to be framed in parts for, 738.
- of local government district, formation of, on constitution of district, 372.
- of parishes for purposes of election of guardians or rural district councillors, 756, 757.
- of urban districts, formation or alteration of, 517.
- voting of owners and ratepayers when district divided into, 430.
- voting in more than one ward, rules as to elections to prevent, 744.

WASHHOUSES. *See* BATHS AND WASHHOUSES ACTS.

WASTE,

- lands, provisions of 8 Vict. c. 18, as to, 831—833.
- roadside—powers of district council as to protection of, from encroachment, 725; representation by parish council as to encroachments on, 726; transfer to county council of powers of defaulting district council as to, 726; saving for powers of county council as to, 726.
- of water, prevention of, 84, 880, 881, 937, 938.

WATER,

- abstraction of, fraudulently, 86.
- analysis of, may be ordered by Court, 96.
- company—liability of to provide fire-plugs, 92; with parliamentary powers, restriction on construction of works within limits of supply of, 79; powers of, to supply water or sell or lease works to local authority, 89; purchase of rights of, 77; regulation of powers of, 1203.
- constant supply of, 82.
- heated, not to be turned into sewer, 570, 571.
- mill, purchase of, 244.
- misuse of, 84, 880, 881, 937, 938.
- pipes for supply of—breaking up of streets for, 83, 84, 876, 877; communication pipes, 84, 878, 879; urban authority may require alteration of situation of, 200.
- pressure of, 82.
- protection of, from fouling, 84, 94—97, 881, 882.
- purchase of, by local authority, 76.
- purity and wholesomeness of, 82.

INDEX.

WATER—*continued.*

- rates—power to charge, 83; payment and recovery of, 84, 882—886, 938;
power of ratepayers to require levy of, 462, 463; for water supplied from
stand-pipes in rural district, 462.
- rents, power to charge, and recovery of, 83.
- rights—purchase of, 77, 89; cannot be acquired compulsorily, 416 *n*; saving
for, 420.
- scale of charges for supply of, fixing of, by Local Government Board, 88, 462.
- stagnant, in dwelling-house, penalty for, 74.
- supply of. *See* WATER SUPPLY.
- undertaking, provisional order authorising, 943—948, 1006.
- waste of, 84, 880, 881, 937, 938.

WATER-CLOSET. *See also* SANITARY CONVENIENCE.

- alteration of, 68.
- bye-laws as to, 204, 205; may apply to existing buildings, 578, 579.
- common to two houses, 64.
- earth-closet to be deemed, when, 65.
- examination of, on complaint of nuisance, 68.
- flushing of, bye-laws as to, 205 *n*, 578.
- new houses to be provided with, 63.
- nuisance not to be created by, 68.
- overflow or soakage from, penalty for, 74.
- provision of—may be enforced, 63, 64; for factories, enforcement of, 65, 66.
- public, provision of, by urban authority, 66, 67.
- supply of water to, bye-laws as to, 578.

WATER COMPANIES (REGULATION OF POWERS) ACT, 1887, text of, 1203.

WATERCOURSE,

- cleansing of offensive, 75.
- nuisance from, 108.
- pollution of, proceedings for preventing, 96. *See also* RIVERS POLLUTION PRE-
VENTION ACT, 1876.
- saving for, so as not to interfere with supply of water to navigable river, &c.,
415.
- sewage to be purified before discharge into, 40.

WATERING

- of streets, 69, 70.
- of turnpike roads and roads over county bridges, urban authority may under-
take, 166.

WATER SUPPLY. *See also* WATERWORKS CLAUSES ACTS.

- to authority of adjoining district, 87.
- to canals, rivers, &c., not to be interfered with, without consent, 415, 420.
- charge for, determination of, by Local Government Board in certain cases, 87,
462.
- to common lodging-houses, 103.
- constant, 82.
- contracts for—power of local authority to enter into, 77; power of company to
enter into, with local authority, 89.
- cutting off of, limitation of powers as to, when rate paid by owner, 1203.
- default of local authority as to, 394 *et seq.*, 460.
- for domestic purposes, right to, 880.
- duty of rural authority to provide or require provision of, 457.
- expenses of rural authority in connection with, 308.
- for fires, 92.
- general powers as to, 76 *et seq.*
- gratuitous, vesting in local authority of works for, 89.
- to houses may be required, when, 87, 88, 457; appeal by owners in rural
district against requirement to provide, 459.
- inspection of, periodically by rural authority, 461.

INDEX.

WATER SUPPLY—*continued*.

- by limited owners, 1071.
- mains for, carrying of, 81.
- for manufacturing and trade purposes, 91.
- by meter, 85, 86.
- new dwelling-house in rural district not to be occupied without, 461.
- notice to be given to parish council of plans for, 714.
- parish councils' powers as to, 703.
- for public baths and washhouses, 91, 851.
- rates and rents for, 83, 84, 462, 882—886, 938.
- scale of charges for, may be fixed by Local Government Board, 87, 88, 462.
- by stand-pipes, rates for, in rural district, 462.
- united district for purposes of, 379 *et seq.*
- to universities, 94.
- to water-closets, bye-laws as to, 578.
- to working class lodging-houses, 647.

WATERWORKS,

- construction of, 76; restrictions on, 79; for gratuitous supply of water for public baths, 91.
- construction of, by limited owners, 1071.
- definition of, 21.
- leasing of, by local authority, 76; by company to local authority, 89.
- maintenance of, 76.
- purchase of, by local authority, 76.
- rating of, when provided by local authority, 78 *n.*
- sale of, by company to local authority, 89.
- support of, over mines, 470, 471.
- water in, to be pure and wholesome, 82.

WATERWORKS CLAUSES ACTS, 1847 AND 1863,

- application to sanitary works of provisions of, as to mines, 470, 471.
- definitions in, 871, 935.
- incorporation of, with Public Health Act, 1875...83, 84.
- provisions of, as to—breaking up streets for laying pipes, 876, 877; communication pipes, 878, 879; guarding against fouling of water, 881, 882; mines, 873—875; payment and recovery of water rates, 882—886, 938; protection of water from waste or misuse, 880, 881, 937, 938; security of reservoirs, 935; supply of water, 937.
- right under, to supply of water for domestic purposes, 880.

WAYWARDENS,

- election of, for part of parish excluded from urban district, 294.

WEIGHING

- of cattle, provision of accommodation for, 1207, 1303.
- of goods and carts, 229, 232, 233, 858—860.

WEIGHTS AND MEASURES,

- powers as to, of council of borough with population under 10,000, to cease, 513.

WEIR,

- purchase of, by local authority, 244.

WELLS,

- closing of polluted, 96.
- digging of, by local authority, 76.
- public, for gratuitous supply of water, vesting of, in local authority, 89.

WHARVES,

- works not to be executed under or through, without consent, 415.

WHIRLIGIGS,

- bye-laws for preventing danger from, 588.

[137]

INDEX.

WHISTLES. *See* STEAM WHISTLES.

WHITEWASHING
of houses may be required, 73.

WIDENING
of streets, purchase of premises for, 201.

WIDTH
of new streets, bye-laws as to, 204, 205; meaning of term, 217 *n*.

WINDING UP
of public clocks, payment by urban authority of cost of, 592.

WINDOWS
in cellar dwellings, 98.

WIRES,
telegraph, telephone, &c., bye-laws as to, 567.

WITNESSES,
powers of Local Government Board inspectors, as to, 390.

WOMEN,
qualified to be parochial electors, 737.

WOODLANDS,
assessment of, to general district rate, 283; to special expenses rate, 311.

WOOLWICH LOCAL BOARD,
application to, of provisions as to disqualification, 744.

WORKING CLASSES,
displaced by scheme under Part I. of Act of 1890—accommodation to be provided for, 606—608; appropriation or purchase of lands for providing accommodation, 614.
displaced by scheme under Part II. of Act of 1890, provision of accommodation for, 630.
dwelling-houses for—amendment of Settled Land Act, 1882, as regards erection of, 649; exemption of assurances of land for, from Mortmain and Charitable Uses Act, 1888...1276; implied condition as to habitable fitness of, 650; sale, &c., of land for purposes of, 650.

WORKING CLASS DWELLINGS ACT, 1890,
text of, 1276.

WORKING CLASS LODGING-HOUSES,
acquisition of land for purposes of, 643.
adoption of part of Housing of Working Classes Act, 1890, relating to, 641, 642.
appropriation of land for purposes of, 643.
bye-laws for regulating, 644, 648, 653, 677.
charges for occupation or tenancy of, 644.
definition of, 640.
disqualification of tenant of, on receipt of relief, 644.
erection, &c., of, by local authority, 643.
expenses of executing Act as to, 642, 645.
inspection of, by local authority, 647.
loans of local authority for purpose of, 646.
powers of local authority as to, 642.
powers of companies, &c., as to, 646, 647.
purchase or hiring of existing, 643.
sale or exchange of lands acquired for, 644.
sale of, when too expensive, 645.
supply of gas and water to, 647.

INDEX.

WORKS,

- approval or disapproval within month of notice or deposit of plan of intended, 217.
- combination of local authorities for execution of, 382.
- entry on lands for purpose of executing, 400.
- execution of, in adjoining district, 382.
- execution of, by parish council, 703.
- of local authority, penalty for damage of, 402.

WORKSHOPS,

- sanitary conveniences for, 576, 577.

WRITTEN,

- definition of, 526.

YARDS

- of new dwelling-houses, bye-laws as to, 205 *n*, 578.

YEAR,

- local financial—fixing of, 523; of district councils, 754.

YORKSHIRE,

- registration in, of charging order under Housing of Working Classes Act, 1890...623.

N.B.—*Pages above 779 refer to Vol. II.*



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